

INDIANA EDUCATION SAVINGS AUTHORITY  
Request for Proposals

INVESTMENT AND ADMINISTRATIVE SERVICES

CollegeChoice 529 Investment Plan

June 11, 2007

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# **INDIANA EDUCATION SAVINGS AUTHORITY**

## **Request for Proposals**

### **I. INTRODUCTION**

The Indiana Education Savings Authority (the Authority) requests sealed proposals from qualified financial services companies (Providers) who wish to provide investment, administrative, customer service and marketing services (Services) for the CollegeChoice 529 Investment Plan, a qualified tuition program (Savings Plan) adopted under Section 529 of the Internal Revenue Code (IRC) and Title 21 (Enabling Act) of the Indiana Code (IC), as attached.

The Authority seeks Proposals from interested firms or groups of firms in providing management services for the Savings Plan offered directly to the public (Direct Plan) and through financial professionals (Advisor Plan). The Savings Plan is currently offered as a Direct Plan and Advisor Plan and the Authority intends to continue to offer both a Direct Plan and an Advisor Plan.

The Direct Plan must offer a reasonable choice of investment options for investors at a reasonable cost. The Direct Plan should focus advertising and planning on the dissemination of information about the Savings Plan throughout the State of Indiana, reaching both rural and urban environments and the full spectrum of socio-economic groups, including non-traditional investors. This includes outreach relationships throughout the State with interested organizations and constituent bodies, such as public and private schools (K-12), school districts, Parent-Teacher Organizations, hospitals, and similar entities, and payroll deduction options for employers or employer groups.

In order to achieve the best choices available to potential investors, the Authority recognizes that many investors may prefer the professional services offered by financial advisors in connection with an assessment of the various alternatives available in the 529 marketplace. Therefore, the Authority is interested in continuing to offer both a Direct Plan and an Advisor Plan.

With respect to all Proposals, please note the following:

1. Providers are required to submit Proposals for program management services for the Direct Plan and the Advisor Plan as one Proposal. Therefore, Providers who only provide direct 529 Plan services or advisor 529 Plan services should seek to partner with other firms to submit a bid for the Direct Plan and the Advisor Plan.
2. Providers should consider their ability to compensate the Authority for the services it and its consultants and advisors provide to the Savings Plan by

receiving a per account fee, asset based fee and/or a fixed dollar commitment.

3. The Authority has entered into an exclusive arrangement with the current program manager for financial services, account administration, marketing and customer service. Providers that do not currently have a relationship with a state 529 Plan administrator should also consider their ability to enter into an exclusive arrangement for program management services with the Authority.
4. Providers should consider their ability to provide a marketing and/or relationship manager within the State.
5. Providers should also consider their ability to provide domestic call center services.
6. The Authority requests that all Providers interested in offering the services submit a response in the manner described in this RFP. Based upon the responses to this RFP and, if the Authority determines that such responses indicate that the goals of the Savings Plan can best be served by contracting with a Provider, the Authority shall select a Provider who can best satisfy the needs of the Savings Plan.

A Pre-Proposal Conference will be held on Wednesday, **July 11, 2007** at 1:00 PM at the Indiana State House, Indianapolis, IN 46204-2792. Please advise Jodi Golden, Executive Director, via phone (317-232-5259) or email ([Jgolden@tos.IN.gov](mailto:Jgolden@tos.IN.gov)) or the Authority's consultant, Mary Anne Busse, Managing Director, Great Disclosure LLC via phone (248-547-4500) or email ([mabusse@greatdisclosure.com](mailto:mabusse@greatdisclosure.com)) by **June 29, 2007** whether or not you plan to attend and for directions to the meeting site. You are encouraged to submit written questions via email prior to the date of the Pre-Proposal Conference (see Section III.B. of this RFP).

The issuance of the RFP or the receipt of any proposals submitted pursuant hereto creates no obligation, expressed or implied, on the part of either the Authority or the State of Indiana (State).

## **II. BACKGROUND INFORMATION**

### **A. Indiana Education Savings Authority**

The following should particularly be noted:

1. The Authority is a body corporate and politic and is not an agency of the State, but is an instrumentality of the State performing essential governmental functions.

2. The Authority offers the Savings Plan on a nationwide basis and offers the Savings Plan in such a manner as to maximize the benefits to the Account Owners and to achieve the purposes of the Authority as described in Chapter 1 of the Enabling Act.
3. The Authority will continue to implement and operate the Savings Plan without any cash outlay from either the Authority (except for the use of an Administrative Fee) or the State.
4. The Authority is designated as a tax exempt entity under the IRC.

The members of the Board are as follows:

1. The four ex-officio members or directors, who are appointed by statute due to their positions, are:
  - (a) The Treasurer of the State;
  - (b) The Superintendent of Public Instruction;
  - (c) The Indiana Commissioner of Higher Education; and
  - (d) The Budget Director for the State; and
2. Additional members or directors appointed by the Governor are currently:
  - (a) Brenda Horn
  - (b) Kevin Brinegar
  - (c) John Hammond
  - (d) Anthony Maidenber
3. There is currently one vacancy on the Board.

#### B. Plan Statistics

Following are the total number of funded accounts and assets in Savings Plan for annual periods since December 31, 2002 and for the period ending April 30, 2007:

Date	Total Accounts	Total Assets (millions)		Avg. Acct Balance
		Direct	Advisor	
12/31/02	24,416	\$ 38.6	\$ 56.7	\$3,903
12/31/03	37,243	\$ 55.6	\$140.3	\$5,260
12/31/04	50,643	\$ 69.1	\$242.2	\$6,147
12/31/05	59,274	\$ 80.6	\$322.2	\$6,796
12/31/06	62,711	\$100.1	\$405.4	\$8,061
4/30/07	74,726	\$121.3	\$464.2	\$7,835

### C. Legislative Changes

House Enrolled Act 1029 of the 2006 legislative session of the Indiana General Assembly enacted a 20% tax credit up to \$1,000 for contributions to the Savings Plan.

The credit applies to contributions made for taxable years beginning after December 31, 2006. During the 2001 legislative session, the Indiana General Assembly passed House Bill 2108 making the earning on qualified distributions exempt from Indiana income tax. On June 7, 2001, President George W. Bush signed the Economic Growth and Tax Relief Reconciliation Act. This Act includes language regarding 529 plans. Specifically, it made earnings on qualified distributions federally tax exempt.

In order to efficiently meet the reporting and administrative requirements of both Section 529 and the Enabling Act, the Authority intends to have one primary provider for investment services, administration, marketing, and customer service. However, since the Savings Plan is accessible on a nationwide basis, separate subcontracting or joint venturing arrangements to ensure such access may be permissible if disclosed to and approved by the Authority. Further, if a Provider is interested in proposing a different arrangement or possible means of dividing responsibilities to obtain a better overall Savings Plan, such will be considered.

## III. ANNOUNCEMENT

### A. Response Submission

Providers who are interested in responding to this RFP shall submit the original and ten (10) copies of their written responses and all attachments to:

The Indiana Education Savings Authority  
One North Capital Avenue, Suite 444  
Indianapolis, Indiana 46204  
Attention: Jodi Golden  
[Jgolden@tos.IN.gov](mailto:Jgolden@tos.IN.gov)

A copy of each response should also be submitted electronically via email or other electronic media. Responses should be presented in accordance with the requirements of Section VII. of this RFP. **The hard copies of each response must be received in the Indiana Education Savings Authority Office no later than 2:00 p.m. EST on August 13, 2007. Responses received after this time will not be considered.**

No more than one proposal per Provider should be submitted. The Provider should designate one person as the principal contact with respect to this RFP. All

responses will be considered open offers for a period of 180 days unless otherwise stated in your response following submission to the Authority.

**B. Clarification of Information**

It is the responsibility of any prospective Provider to inquire about and clarify any aspect of the RFP. Each inquiry should include a specific reference to the question in the RFP for which clarification is sought. **Questions for clarification must be submitted in writing no later than July 2, 2007, at 4:00 p.m. EST and emailed, delivered, or sent via facsimile transmission to:**

Indiana Education Savings Authority  
One North Capital Avenue, Suite 444  
Indianapolis, Indiana 46204  
Attention: Jodi Golden  
Fax: (317) 232-6650  
Email: JGolden@tos.in.gov

Questions and answers will be discussed at the Pre-Proposal Conference to be held July 11, 2007. Copies of questions and answers submitted in writing and presented at the Pre-Proposal Conference will be available on the Indiana Education Savings Authority web site at the following link [www.in.gov/iesa/](http://www.in.gov/iesa/) no later than July 18, 2007. Providers shall have full responsibility for accessing the web site.

**C. No Contact**

Any contact concerning this RFP should be limited (and, if possible, should be in writing). Jodi Golden and Mary Anne Busse are designated as the sole points of contact. The Authority specifically requests that no contact concerning this RFP be made with any member of the Authority or the Board, or their respective employees, during the selection process. Failure to honor this request will be viewed negatively in the selection process and may result in disqualification of the bidder.

## **IV. MINIMUM QUALIFICATIONS**

**A.** Providers must clearly state and demonstrate within the Executive Summary of the Technical Proposal that they satisfy the following qualifications.

1. Maintain at least \$1 billion in assets;
2. Been in business for at least 5 years (including predecessor organizations);

3. Been rated by 2 or more nationally recognized rating services within the three highest rating categories for financial condition and operational performance. If the Provider is privately held and has not been rated by a nationally recognized rating service, the Provider must describe the circumstances under which such ratings have not been conducted. The Provider shall also describe any alternative financial condition and operational performance measures that it believes will be helpful in considering the minimum qualifications of the Provider.
  4. Maintain all applicable federal licenses and registrations necessary to conduct a financial services business (e.g. - registered Investment Advisor, Investment Company and/or Broker/Dealer, as applicable); and
  5. Comply with the Disclosure Principles Statement No. 2 adopted by the College Savings Plans Network (CSPN) and any successor Disclosure Principles adopted by CSPN.
- B. If the Provider is a joint venture, partnership or other consortium of financial services companies, qualifications 1 through 3 may be satisfied by the members of such venture, partnership or consortium collectively. In addition, experience in the 529 marketplace is preferred, but not mandatory.

## V. SCOPE OF WORK – DIRECT PLAN

The Provider will provide the Services to the Authority and the participants in the Savings Plan. Providers should affirm that they will fully satisfy the following General Requirements or elaborate on any modification or exception to them. **A Proposal that takes exception to any portion of the Scope of Work may be rejected.**

- A. General Requirements and Considerations:
1. **Mandatory Contractual Terms.** By submitting an offer in response to this RFP, a Provider, if selected for award, will be deemed to have accepted the terms of this RFP and the Agreement which is attached hereto and by this reference incorporated herein as Attachment B. **Any exceptions to this RFP or the Agreement must be clearly identified in the Executive Summary of the Technical Proposal.**
  2. **Agreement Duration.** If a Provider is selected pursuant to the RFP, the Agreement will be either (i) for a period of five years (with the possibility of



two renewal terms of one year each at the sole option of the Authority) or (ii) for a period of seven years (with the possibility of two renewal terms of one year each at the sole option of the Authority), commencing upon completion and execution of a contract for the Services. Each Provider is asked to submit a Proposal that contains pricing and Savings Plan structure options for each of the Agreement durations listed above. Please see Section VII. E – VOLUME II – Financial Proposal and Attachment C.

3. **Compensation and Payment.** The Provider will be compensated for the Services under the Agreement solely through fees collected from Savings Plan Account Owners, consistent with the Provider's Financial Proposal.

The Provider will not receive additional compensation for miscellaneous charges including, but not limited to, photocopying, postage, telephone, facsimile, shipping/handling and courier/messenger costs between the Provider's location(s) and any Authority office. This type of administrative/operational expense may not be part of Attachment C, Financial Proposal Schedule, which is attached hereto and by this reference incorporated herein.

The Provider will not receive compensation for travel time or related expenses such as transportation, mileage, parking, etc., for meetings with the Authority or any vendors rendering services to the Authority and/or the Provider. Travel related expense may not be part of Attachment C, Financial Proposal Schedule.

Providers submitting Proposals must follow the Scope of Work parameters outlined in Sections V and VI. Fees for participants that do not use broker/dealers must not include any extra fees to compensate broker/dealers. Any additional fees necessary to recover broker commissions must be specified in Attachment C. Any person interested in the Savings Plan will not be required to use a broker/dealer, regardless of residency or ties to the State of Indiana.

4. **Administrative Fee.** The Authority requires that an Administrative Fee be payable on a monthly basis to the Authority for Savings Plan administrative services. Currently, the Authority receives a \$10 per Account annual Administrative Fee charged to each Account Holder. This fee is waived for Accounts with Account Owners and/or Beneficiaries who are Indiana residents. The Authority is willing to consider a continuation of this type of arrangement or another arrangement based on basis points or other method of calculation. Consideration should be given to an increase in the Administrative Fee for achieving certain breakpoints. The Provider will calculate and remit the payment for these fees, as applicable, to the Authority by the 10<sup>th</sup> business day of every month for the prior month.

5. **Confidential Information.** The Provider must recognize that all information concerning the Savings Plan and participants therein is the sole property of the State, is confidential and is not to be used by the Provider for any other purpose. Providers shall refrain from any direct communication with the participants in the Plan, except as approved in advance by the Authority.
6. **Audits.** The Provider will supply to the State Board of Accounts or other outside auditing firm, the Authority and any appropriate governmental entity all accountings, reports and information as may be required by the Authority, the Enabling Act or Section 529. It should be noted that there are provisions in the Enabling Act relating to an annual audit by an independent accounting firm. Compliance with audit requirements is a requirement of any Provider without additional charge to the State or the Authority.
7. **Separate Accounts.** Each Account must be maintained as a separate account, identifying each Account owner by Social Security number (or alternative identification code).
8. **Disbursements.** Disbursements from an Account must be made in accordance with the Enabling Act, Section 529 and the rules adopted thereunder, and the rules enacted from time to time by the Authority. The Provider must supply to the Authority an itemized list of disbursements and tax withholdings and, as the Authority's agent, effect the proper tax reporting forms.
9. **Plan Features.**
  - a. **Minimum Contribution.** Currently, the Savings Plan requires a \$50 minimum initial contribution per investment option OR \$25 per pay period per investment option if contribution is through employer payroll deduction or a systematic investment plan.
  - b. **Maximum Contribution.** The current maximum contribution is limited to a \$298,770 account balance for all accounts that have been opened for a Beneficiary.
  - c. **Expense Ratio.** The total expense ratio for the Savings Plan should be less than 90 bp (including the program management fee and the expense ratios for the underlying investment options) for the Direct Plan. The total expense ratio for the Advisor Plan should be within industry standards for a Provider providing program management services to a Direct and Advisor Plan. Consideration should be given to an expense ratio that reduces as the Savings Plan achieves certain breakpoints.

- d. **Investment Options.** The Savings Plan currently offers 17 portfolios, of which 5 are age-based. Each of the Advisor Plan and the Direct Plan offer the same Investment Options. The Savings Plan is structured as an open-architecture platform. The Authority is generally comfortable with the current investment options and is particularly interested in continuing to operate the Savings Plan on an open-architecture platform. The Authority is also willing to review alternative Savings Plan structures and encourages each Provider to present the best Investment Options available.
  - e. **Enrollment Fee.** Currently, no enrollment fee is charged for the Savings Plan. The Authority is not open to considering an enrollment fee as part of a Provider's Proposal.
10. **Investment Strategy and Savings Plan Goals.** It is the goal of the Authority that the investment strategy and structure of the Savings Plan
- a. maximizes the return and minimizes the risk of loss to each participant, including Contributors, Account Owners and Beneficiaries;
  - b. ensures availability of funds to meet higher education needs of Beneficiaries, considering the age of each Beneficiary;
  - c. encourages participation by minimizing any required Account balances or contribution levels;
  - d. offers participants ample choice of investment options and fund selections;
  - e. simplifies the current fee structure; and
  - f. minimizes the overall fees charged to participants.
11. **CSPN Guidelines and Data Submission.** The Provider must agree to comply with all CSPN requirements, guidelines, and/or best practices including the CSPN Disclosure Principles Statement No. 2 and any successor Disclosure Principles adopted by CSPN. The Provider must also agree to timely submit Savings Plan data required for maintenance of Savings Plan information on the CSPN website.

## B. Financial Services

The Provider must possess the requisite knowledge and demonstrate previous experience in providing investment management services, including the ability to consistently deliver investment returns that meet or exceed their respective indexes

in 3 - 5 year time periods.

The Authority intends to select one Provider but will not rule out multiple vendors in an effort to promote new types of Proposals and choice among portfolio options. The foregoing notwithstanding, the Authority requires that ease of understanding among the investment choices and minimization of fees are top priorities.

The Provider must propose the specific investments that would comprise each of the investment portfolios proposed. The Provider may also propose other investment portfolios along with the specific investments and an explanation of the consumer benefits of the additional portfolios.

Any investments that would comprise an investment portfolio must meet the requirements of the Investment Policy Statement for CollegeChoice 529 Investment Plan (Investment Policy) adopted by the Authority. The Investment Policy sets forth an investment structure for managing Savings Plan assets, establishes criteria and procedures for selecting investment options and investment managers, provides guidelines for each Investment Option, and establishes formalized criteria to monitor, evaluate and compare the performance results achieved by investment managers. The Authority has final authority with regard to the Investment Options offered under the Savings Plan and asset allocation within each Investment Option.

If applicable, the Provider must provide appropriate and suitable investments for the transfer of investments in the current plan.

Performance information with regard to each investment option must be updated at least daily on the Savings Plan website. The Provider must also comply with any performance related criteria recommended by CSPN. On at least a quarterly basis, and more frequently as necessary, the Provider must inform the Authority and its financial advisor about significant changes in the investment climate, market conditions or investment philosophies that could affect Savings Plan investments.

#### C. Account Administration

The Provider must possess the requisite knowledge and demonstrated previous experience in administering investment accounts, including the ability to deliver performance standards outlined below.

The Provider must submit as part of the Technical Proposal a plan for the establishment and maintenance of accounts, as well as all aspects of customer service to existing and prospective Savings Plan Account owners. While The Savings Plan accounts are currently administered through the Boston Financial Data Services (BFDS), the Authority has no particular preference with regard to the continued use of BFDS. The account administration strategy referenced above will also address the location of the employees providing customer service and the

installation of communications facilities that connect the Provider's work site to the servers necessary to access customer accounts. The Provider must also address performance standards for all facets of account administration. These standards will include at a minimum:

1. Procedures for requests to change accounts, including quality controls;
2. Availability of live customer service representatives for both sales and service (number of representatives, hours during the day, days per year, online customer service) and access to electronic customer service at all other times; and
3. Procedures for ensuring security of Account Holder and Beneficiary information including security measures for communication via internet or telephone or in writing.

The Provider must provide Savings Plan enrollment online and through a central mailing location that can receive express deliveries by normal U.S. postal services.

The Provider must process all contributions and withdrawals, maintain all records and comply with all tax and securities laws as required under Section 529 (and any rules adopted thereunder), federal and state securities regulations, guidelines established by CSPN and any performance criteria established by the Authority. Such responsibilities include aggregation of accounts for federal tax law purposes, having audits conducted annually and the provision of reporting information as requested by the Authority for the preparation of the annual report contained in Section 21-9-5-9 of the IC.

Additional service requirements are listed under Section E, Customer Service.

#### D. Marketing

The Provider must possess the requisite knowledge and demonstrated experience in marketing investment products – preferably Section 529 Plans – to motivate and assist families in investing for future college expenses.

Marketing efforts include advertising (television, radio, print), marketing materials (enrollment kits and brochures), a toll-free number and website, and face-to-face marketing (group presentations, event marketing). This allows prospective Account Owners to choose the plan(s) and investment options that best suit their specific needs and will also facilitate cross-selling opportunities. Marketing should be conducted both in-state and out-of-state year-round.

Current marketing efforts on behalf of the Savings Plan are conducted on a joint basis between the Authority and the current program manager. The source of funds

includes the Administrative Fee collected by the Authority and funds allocated by the program manager on the Authority's behalf. A minimum of \$375,000 is budgeted by the current program manager for marketing services, including preparation and distribution of disclosure statements. In addition, the current Administrative Fee collected by the Authority is equal to approximately \$450,000 annually and is used to support the marketing and administration of the Savings Plan.

General Requirements include:

1. The Provider will work with the Authority on all aspects of the marketing and public relations campaigns undertaken. The Authority will have final approval of all marketing and public relations decisions.
2. The Authority currently collects a \$10 per Account Administrative Fee for Accounts outside of Indiana which is used, in part to cover in-state marketing costs. Depending on the structure of the Provider's proposal, including the structure of the Administrative Fee, up to 100% of the marketing costs associated with the in-state and out-of-state marketing efforts may be borne by the Provider.
3. The Savings Plan's web site will, at all times, be the sole source of detailed information available via the internet regarding the Savings Plan. Any inquiries made on the Provider's web site about the Savings Plan must be linked directly to the Savings Plan's web site.

#### E. Customer Service

The Provider must possess the requisite knowledge and demonstrated experience in providing customer service for Section 529 Plans or similar products in a manner that substantially meets the performance guidelines specified in this Section V.

Inbound telephone and online inquiries require interacting with prospective participants by answering any questions they may have about the Savings Plan and by taking their names and addresses to send them information.

Live Customer service representatives must be available to answer questions about the Savings Plan from at least 8:00 am to 7:00 pm Eastern Standard Time, Monday through Friday, except U.S. Bank holidays. These customer service representatives are trained by the Provider using materials approved in advance by the Authority. An automated voice response unit and internet servicing access must be available at all other times.

When calling the toll-free number for the Savings Plan, currently 1-866-400-7526, a prospective customer will have several options through a voice mail menu. For example, they can listen to a prerecorded message that provides a general overview about the Savings Plan (approved by the Authority and the Provider). One option will

be to the office of the Provider to answer questions about the Savings Plan. Any cost to modify the Savings Plan's existing toll-free number will be the responsibility of the Provider.

**1. General Requirements:**

- a. Maintain a database of inbound callers seeking enrollment materials, including information such as:
  - i. Caller's name, address and telephone number
  - ii. County of residence (Indiana callers only)
  - iii. Number of children and ages
  - iv. Where the caller heard about the Savings Plan – radio, newspaper, friend, etc.
- b. Provide the Authority with a monthly report monitoring daily call volumes, call durations, time of calls, hold time, and abandoned calls.
- c. Update or change prerecorded messages, question and answer scripts, and training scripts when required or needed throughout the year using scripts approved by the Authority.
- d. Provide a means for all participants to express concerns, comments or complaints regarding the Savings Plan and must create and maintain a website and toll-free voice response unit for customer service inquiries, account balance information, enrollment, and withdrawal and marketing requests.
- e. Provide a means for participants to contribute to their Savings Plan accounts through the workplace.
- f. Agree to maintain the confidentiality of all participant and Beneficiary information.

**2. Service Level Requirements:**

- a. Telephone Inquiries
  - i. Abandonment Rate – less than 2%
  - ii. Percent of Calls Answered within 30 seconds – 90%
- b. Correspondence:
  - i. Financial Correspondence Timeliness – 99% of financially related correspondences are sent within 2 business days of receipt.
  - ii. Non-Financial Correspondence Timeliness – 99% of non-financial correspondences are sent within 7 business days of receipt.

- c. Check Processing:
  - i. Accuracy of Posting Payment – 99% of checks received are accurately posted to a matching account with the correct amount and with the day of receipt's trade date.
  - ii. Check Posting Timeliness – 99% of the checks are posted to the Account Owner's account by the day after receipt.
- d. Confirmations, Statements, Tax Reporting:
- e. Timeliness of Monthly, Quarterly and Year-End Account Owner Statements – 99% are mailed within 7 business days of approval
- f. Timeliness of Daily Confirmations – 99% of daily confirmations are mailed within 5 business days.
- g. Accuracy of Confirmations, Statements and Tax Reports – 99% of confirmations, statements and tax reports are accurate.
- h. Timeliness of Tax Reporting – 99% of federal tax reports are mailed on the agreed-to date.

#### F. Reports

The Provider will generate reports to evaluate the effectiveness of all aspects of the Services. Such reports will be produced individually or combined and will be provided to the Authority. Reports will include, at a minimum:

1. Performance of all Investment Options as compared to their benchmarks;
2. Amount of assets and number of funded accounts by investment option;
3. Number of Account Owners and Beneficiaries;
4. Number of new Accounts and closed Accounts;
5. Information designed to track trends in new Accounts, average Account size and demographics of Account Owners and Beneficiaries;
6. Call volumes and financial and non-financial transactions;
7. Such other information as the Authority may request to monitor and control this Agreement.



Performance information will be provided to the Authority and its financial advisor at least quarterly. All other information will be provided on a monthly basis. The Provider must attend all regularly scheduled Authority meetings to review the services to be provided under the Agreement.

#### G. Transition

The Authority's contract with the current program manager expires on December 31, 2007. If the Authority awards a contract under this solicitation to a Provider other than the current program manager, the new Provider will begin providing services outlined in this Section V, on or about December 31, 2007.

The Provider will submit a plan to describe the transition of services that will begin with the commencement of the effective date of the Agreement, which is currently planned for September 2007. The transition planning and execution would then occur from September 2007 through December 31, 2007 (or until such time as the transition is complete) to ensure proper transfer of all services.

## **VI. SCOPE OF WORK –ADVISOR PLAN**

Each of the services and benchmarks outlined under Section V above also apply to the Advisor Plan. In addition to such services, the Advisor Plan must include the following services.

#### A. General

Services for third party account administration, broad channel distribution, broad-based marketing and high quality customer support. These efforts will be designed to reach the broadest segments of the Indiana population by using multiple financial intermediaries. The Contractor will develop fee structures that appeal to a variety of distributors while also maintaining a reasonable cost structure for Indiana residents.

#### B. Financial Services

The Provider must design distinct investment options for each of the Direct Plan and the Advisor Plan. The Provider must describe the proposed distribution plan, including the use of wholesalers and independent broker/dealers within the State, the mid-West and remaining U.S. regions.

### C. Marketing

The Provider must provide all necessary tools, literature, and support services for the distribution of the Advisor Plan by the broadest possible group of financial intermediaries. This will include a training program and related information materials concerning potential risks associated with the Advisor Plan.

Within the State, the Provider must include prominently in its disclosure materials the availability of the Direct Plan as an alternative 529 investment option. Direct Plan disclosure materials will also include the availability of the Advisor Plan through financial intermediaries and other professionals. Language used and placement within disclosure and other enrollment materials used in the Advisor Plan must be subject to approval by the Authority.

### D. Recordkeeping

The Provider will provide a means to make commission and other sales-related payments to third party financial intermediaries in an efficient manner.

## VII. SUBMISSION REQUIREMENTS

### A. Proposal Format

Proposals must be submitted in two parts:

Volume I – TECHNICAL PROPOSAL, and  
Volume II – FINANCIAL PROPOSAL

The Technical Proposal and the Financial Proposal may be presented in one sealed package and as one document as long as each portion of the Proposal is clearly identified. An original and ten (10) copies of each Provider's Proposal are to be submitted. If the Provider is submitting an electronic version via email, this should be noted in the transmittal letter. If the Provider is submitting an electronic version via CD or other electronic media, such media should be included in the Proposal package.

**All pages of each Proposal volume must be consecutively numbered from beginning to end and should follow the same format as this RFP.**

### B. General Preparation Instructions

The Provider's Proposal should address all points and questions outlined in this RFP. It should be clear and precise in response to the information, requirements and format described in this RFP.

### C. Transmittal Letter

A transmittal letter must accompany the Proposal. The transmittal letter should be brief and signed by an individual who is authorized to commit the Provider to the services and requirements as stated in this RFP. All Providers must acknowledge, in their transmittal letter, receipt of this RFP and any addenda to this RFP. The outside envelope should be sealed and clearly marked: "Response to Request for Proposals for the CollegeChoice 529 Investment Plan". All Bids must be submitted to:

Indiana Education Savings Authority  
One North Capital Avenue, Suite 444  
Indianapolis, Indiana 46204  
Attention: Jodi Golden

### D. VOLUME I – Technical Proposal Contents

The Technical Proposal must include a Table of Contents and a declaration of confidential sections of the Proposal (if any).

The Technical Proposal must also include an Executive Summary. The Executive Summary should clearly demonstrate that the Provider has an understanding of the objectives and goals of the Authority set forth in this RFP, and an understanding of the scope of work. This Summary must clearly state and demonstrate the minimum qualifications as listed in Section IV of this RFP. It should also contain a brief synopsis of the contents of the entire Proposal as well as include an analysis of the effort and resources that will be needed to realize the objectives of this RFP. The Executive Summary will also identify any exceptions the Provider has taken to the requirements of this RFP or the Agreement (Attachment A.) **A Proposal that takes exception to the requirements of this RFP or the Agreement terms may be rejected.**

#### 1. General Information

- a. State name, address, telephone number, facsimile number, and Web site address of Provider.
- b. Provide names, addresses, telephone numbers, facsimile numbers and e-mail addresses of the individuals who will coordinate all activities related to the services. Provide background and experience information on each individual.
- c. Furnish a copy of the Provider's annual report and audited financial statements for fiscal years 2005 and 2006.

- d. Provide your most recent ratings reports from any available agencies (A.M. Best, Moody, Standard & Poor, Conning and Company and/or Duff and Phelps). Indicate the date you were last reviewed by each rating service. State your current rating and identify and explain any and all rating changes during the last five years.
- e. List similar 529 Plans for which you provide (either currently, or within the last three years) investment and administrative services. Include the following information:
  - i. Length of time of your involvement
  - ii. Types of services you offer
  - iii. Aggregate annual cash flow
  - iv. Total assets of each plan
  - v. Plan assets held by your company
  - vi. Actual annual rates of return credited under each plan during the past three (3) years
  - vii. Name, address, email, and telephone number of the government official or other person who could be contacted as a reference
  - viii. Total number of accounts and/or participants
- f. Pursuant to IC §4-13-16.5 and in accordance with 25 IAC 5-5, there is a reasonable expectation of minority business enterprise participation in this contract. A contract goal of five percent (5%) minority business enterprise participation has been established and all Providers are encouraged to demonstrate a good faith effort to comply with the regulations set forth in 25 IAC 5-5. Participation need not be only through sub Providers, but can also be through second tier participation with common suppliers (office supplies, courier services, for example) in the response. Please document your company's efforts to promote minority business enterprise participation.
- g. It is the desire of the Authority that some or all of the services be provided within the State of Indiana. Please document your company's efforts and your intent with respect to this issue.

## **2. Plan of Service**

This section will provide a detailed discussion of the Provider's service capabilities demonstrating the Provider's approaches to address the requirements outlined in Section V (and Section VI, if applicable) of this RFP. The Plan of Service will fully explain how the proposed services will satisfy each requirement listed in this RFP (Section V - Scope of Work and Section VI –Scope of Work- Advisor Plan, if applicable). It should indicate all significant capabilities or issues that will be examined to fulfill the scope of work. Providers must include a transition and

management plan to ensure continuity of services currently being provided under the Authority's existing contract, and also, a similar plan describing how they would ensure continuity of services when the term of the Agreement concludes. This demonstration should be presented in the same numbered order in which the requirements appear in Section 5 and Section 6, if applicable.

The Provider will propose a staffing plan to provide the services required by this RFP in accordance with all required quality standards and will include resumes for those with principal responsibilities for managing the Provider's responsibilities under the Agreement as well as for those with principle responsibilities for each functional area.

Each Provider should identify any sub-contractors intended to be used in the performance of the Agreement, and the role each proposed sub-contractor will perform in providing the Savings Plan services. If the Provider will use no sub-contractors, so state.

In addition to addressing the requirements described in Section V (and Section VI, if applicable), Providers must submit the following as part of their Plan of Service:

**a. Financial Services**

Each Proposal should include the following:

1. Describe the specific investments that would comprise each of the Investment Options in the Savings Plan. The Provider may also propose other investment options along with the specific investments and an explanation of the consumer benefits of the additional options.
2. Describe the Provider's due diligence process regarding selection and monitoring of the proposed investment vehicle(s). Give examples of reasons for removal of investment vehicles. Provide an example of and rationale for a recent change in an investment vehicle as a result of the due diligence process.
3. Describe the Provider's internal and outside mutual fund offerings including the amount of revenue sharing with each mutual fund.
4. Describe the Provider's internal investment management capabilities and breadth of mutual fund offerings.
5. If non-proprietary mutual funds are proposed for inclusion in the age-based Investment Options, describe the limitations, if any, on the (a) number of outside mutual funds that may be utilized or (b) the dollar amounts that can be allocated to outside mutual funds.

6. Describe any limitations on the use of non-proprietary mutual funds and any additional fees that may be assessed in connection with the use of such non-proprietary mutual funds.
7. Describe whether the Provider, its employees, and/or any affiliated or related entity will be paid fees or commissions (including those from revenue-sharing and commission recapture services to the Savings Plan) from sources other than the Savings Plan.
8. Describe how investment management fees may be used to reduce or offset other service fees.

**b. Account Administration**

Proposals will include, at a minimum, descriptions of:

1. The proposed system (if other than BFDS), the number of accounts currently administered on this system, the approximate dollar value of such accounts, and the frequency and volume of individual transactions that are processed on a daily and weekly basis.
2. The reliability and integrity history, other market experience and uses of the proposed system (if other than BFDS).
3. Plans and procedures for accepting and processing new enrollments, maintaining individual accounts, including making changes to accounts, posting contributions (including payroll and EFT transactions), and ensuring that the current accumulated contributions and net asset value for each account owner and Beneficiary are available on a daily basis.
4. Online access capabilities to the account administration system, including online enrollment, account maintenance and withdrawals.
5. If applicable, the Provider's ability to coordinate all facets of account administration for a Direct Plan and an Advisor Plan. Issues such as maximum contributions, distributions, and rollovers should be addressed.
6. The Provider's account administration experience specifically for Section 529 Plans.
7. Procedures for generating account statements and reports, including information regarding format, frequency, transmittal methods, customization, joint account statement options, etc. and any available sample reports.
8. A disaster recovery plan describing in detail, how services will be resumed within twenty-four (24) hours of a disaster.

9. The Provider's policies, procedures, data encryption, and technical measures to prevent unauthorized access or alteration, fraud, theft, misuse, or physical damage to hardware, software, communications networks and data.

**c. Marketing**

1. Provider must present marketing strategies to be utilized for Indiana families, as well as marketing strategies to attract Account Owners outside of Indiana.
2. The Provider will outline existing relationships that it has with companies or firms that provide consulting or other marketing services that are expected to contribute in any way to the marketing of the Savings Plan.
3. The Provider will provide samples of marketing and disclosure information that it currently uses.
4. The Provider will outline the steps it will take to separate the marketing message of the Savings Plan and any other Section 529 Plans it administers when marketing in Indiana and the surrounding region to ensure that the Savings Plan will be the only 529 Plan in the Provider's marketing strategies in the State.
5. The Provider will outline any arrangements with other 529 Plans with regard to marketing an advisor sold plan within the State and how the Advisor Plan will be given priority and promoted within the State. The Provider will also outline how the Advisor Plan will be promoted outside of the State, especially in states where the Provider already markets an advisor sold plan.
6. The Provider will outline the steps it will take to separate the marketing message of the Savings Plan from other Provider-administered Section 529 Plans outside of the State.
7. The Provider must describe any agreements it or any of its affiliates has with other states regarding the marketing of Section 529 Plans around the country and the marketing of other Section 529 Plans in any such plan's home state.
8. The Provider should describe plans for marketing opportunities outside of the State.
9. The Provider will describe its ability to develop and maintain the Savings Plan web site ([www.collegechoiceplan.com](http://www.collegechoiceplan.com)) and describe its

maintenance and intended references to the Savings Plan on the Provider's web site.

10. Provider will provide plans to market the Savings Plan specifically to State employees.
11. Describe any products that Provider currently offers to State residents that compete or potentially could compete with the Savings Plan. Indicate whether the Provider would agree to contract with the Authority to refrain from directly or indirectly offering any competing product for so long as the Provider is providing services to the Savings Plan. If the Provider would not agree to contract to refrain from offering any competing product, explain how the Provider's offering of one or more competing products can be done consistently with an obligation to aggressively and effectively market and administer the Savings Plan.

**d. Customer Service**

1. The Provider will describe its strategies for transmitting and sharing databases of callers to and with the Savings Plan, as well as ensuring the confidentiality of the database.
2. The Provider will include in the discussion the steps that will be taken to ensure that the Savings Plan database is not combined with other databases maintained by the Provider.
3. The Provider will provide the Authority with contingency plans or emergency plans for days and/or times when the call volume may exceed the successful Provider's ability to handle the calls quickly and expeditiously. The Provider will also provide the Authority with any contingency plans for handling telephone calls from hearing impaired and non-English speaking callers.
4. The Provider will outline the ability of its customer service representatives to transfer callers to the Direct Plan or Advisor Plan, as applicable.
5. The Provider will outline procedures for responding to verbal, written, and online inquiries or complaints about the Savings Plan.
6. The Provider will outline procedures for the production and distribution of quarterly statements to Account Owners, as well as the Provider's ability to accommodate additional or more detailed reports if required by the Authority.



7. The Provider will include service levels achieved for Section 529 Plans currently under management and/or similar programs. Describe how the Provider intends to meet the service level requirement contained in Section V.E. Provide anticipated service levels for each measure listed and describe the Provider's resources available for the Savings Plan.

**e. Transition Plan**

Describe the Provider's proposed Transition Plan as outlined in Section V.G.

**3. Experience and Capabilities**

**a. Provider's Minimum Qualifications**

In compliance with the minimum qualifications set forth in Section IV, Provider must:

1. Describe the firm, including who holds controlling interest in the firm. Provide a percentage breakdown of any party having a legal or beneficial interest of greater than five percent (5%). If the firm is employee-owned/controlled, indicate what percentage of the firm's ownership interest employees own.
2. Discuss organizational structure, including size and location(s).
3. Discuss whether the Provider or its parent or affiliate is a registered broker/dealer. Does the Provider trade in securities with the parent or affiliate; if yes, describe any process designed to avoid conflict of interest. Describe if these systems negatively affect the Provider's ability to perform its duties and if so, what measures have been utilized to lessen this impact.
4. Providers must provide a statement of their firm's invested assets under management for the past five years. Indicate if mergers or acquisitions influenced any growth in that time.

**b. Capabilities:**

Provider must describe in detail how they possess the following capabilities:

1. Full Service - Provider must be a financial services firm experienced in all facets of investment management services.
2. Contact Personnel - Provider must provide a senior level manager who will be responsible for the relationship between the Provider and the Authority. The principal day-to-day contact must also be identified.

3. Project Management Team - Providers must list its project management team and describe both how the team will interact with the Authority and how the team will accomplish the requirements of this RFP. Please also provide summary resumes for all essential personnel who may provide these services. Their resumes should include past experience servicing similar types of programs and any familiarity with agencies, authorities, and instrumentalities of the State.
4. Discuss whether the Provider is registered (or is exempt from such registration) under the Investment Advisors Act of 1940 and/or registered or licensed by the U.S. Securities and Exchange Commission, any self-regulatory organization (as such term is defined in §3(a) (26) of the Securities Exchange Act of 1934, as amended); any regulatory agency of any state of the United States; or any U.S. Government department or agency.
5. State whether the Provider is a licensed member of the Securities Investor Protection Corporation (SIPC). If so, state the amount of SIPC protection the Provider provides.
6. Describe how the Provider proposes to properly evaluate the project management team on a continual basis to ensure that quality standards are met. The Provider will provide the Authority periodic analysis of results of program performance.
7. Provide an overview of experience rendering services to other Section 529 Plans, or in offering services similar to those included in Sections V and VI of this RFP. This description must include a summary of the services offered, the number of years the Provider has provided these services, the number of clients, the size of the programs served, and geographic locations the Provider currently serves.
8. Provide three references that will be applicable to the specific services requested in this RFP. The Authority will have the right to contact any reference as part of the evaluation and selection process. If a Proposal uses a sub-contractor(s), provide three references per sub-contractor. If the Provider (or a sub-contractor) provides this service or a similar service to another Section 529 Plan – or a state or municipal government, please use such entities as a reference. References are to include descriptions of:
  - a. The Provider's ability to manage contracts of comparable size and complexity;
  - b. The quality and breadth of services provided by the Provider;
  - c. Each client reference is to include the following information;

- d. Name of client organization: Name, title, and telephone number of Point of Contact for client organization;
- e. Value and type of contract(s) supporting the client organization, the date the work was performed or the duration of contract(s) supporting the client organization, and the service location; and
- f. If the Provider is no longer serving this client, an explanation of why the Provider is no longer providing the services.

#### **4. Legal Actions Summary**

The Provider(s) must include the following:

- a. A statement as to whether there are any outstanding legal actions against the Provider, and a brief description of any such action.
- b. A brief description of any settled or closed legal actions against the Provider over the past five (5) years.
- c. A brief description of any pending or prior litigation against the Provider, its officers, directors, principals or key personnel related to participation in company, employer or government sponsored investment plans over the past three (3) years.
- d. A statement as to whether or not the Provider has filed (or has filed against it) any bankruptcy or insolvency proceeding, and if so, provide details.
- e. A brief descriptions of any extraordinary investigation, examination, complaint, disciplinary action or other proceeding relating to or affecting the Provider or any of its employees, agents, etc. that has occurred within the last ten (10) years, which was commenced by any of the following: the U.S. Securities and Exchange Commission; any self-regulatory organization (as such term is defined in §3(a)(26) of the Securities Exchange Act of 1934, as amended); any Attorney General or any regulatory agency of any state of the United States; any U.S. Government department or agency, or any governmental agency regulating securities of any country in which the Provider is doing business.

#### **5. Indemnity Insurance**

Describe the level of worker's compensation insurance, directors' and officers' liability insurance, fiduciary professional liability insurance, public liability insurance and fidelity bonds or similar coverage maintained by the Provider and any agents and/or sub-contractors proposed to provide any of the services described in this

RFP. All such insurance should be provided by insurer(s) rated A-, class X or better by A.M. Best & Company, or otherwise approved in writing by the Authority. If the Provider is a joint venture, partnership or consortium, each party must meet these criteria.

## **6. Financial Capabilities and Statements**

Providers must demonstrate financial stability. Technical Proposals must include:

- a. Evidence that the Provider has adequate financial capacity to provide the services.
- b. Copies of the last two (2) year-end audited (preferred) financial statements or best available equivalent report.
- c. An analysis of those financial statements/reports.

## **7. Sub-contractors**

If any significant portion of the work listed above is not expected to be performed by the Provider, the Provider must list any sub-contractors that are proposed to provide the required products and services. Providers must identify sub-contractors and the role these sub-contractors will have in the performance of the contract.

## **E. VOLUME II – Financial Proposal**

The Financial Proposal must contain all cost information in the format specified in Attachment C. All Financial Proposals will be typewritten or written legibly in ink. The signer will initial all erasures in ink.

All Financial Schedules (Attachment C) will be signed in ink as follows:

1. As an Individual – Sign with full name and address
2. As a Partnership – Partners will sign with full names and business address
3. As a Corporation – An authorized officer of the corporation will sign with full name and title and will include the name and address of the corporation.

# **VIII. SELECTION PROCESS AND CRITERIA**

## **A. Award of Contract**

The Authority reserves the right to reject any and all responses to this RFP. The Authority may choose to appoint a selection committee to compile a list of finalists and either seek additional information from these Providers to clarify best and final offers and/or permit an oral presentation to the Authority. The Authority will determine which proposal offers the best means of servicing the interests of the Savings Plan and the State.

The Authority reserves the right to add additional Providers at any time, particularly in the area of marketing and Savings Plan education.

#### B. Evaluation Criteria

Responses will be evaluated based on the following criteria:

1. Competitiveness of earnings performance and product features;
2. Financial stability and strength of Provider;
3. Customer service;
4. Costs charged to any account or any other entity;
5. Indiana resident and non-resident accessibility;
6. Marketing commitment to broaden customer base;
7. Administrative capacity and strategy;
8. Any other quality or characteristic deemed in the best interests of the State or the Authority; and
9. Goal measurement and monitoring criteria.

Potential Providers are advised that materials contained in proposals are subject to the Indiana Public Records Act and may be viewed and/or copied by any member of the public, including news agencies and competitors, in accordance with said Public Records Act IC 5-14. Providers claiming a statutory exception to the Indiana Public Records Act should indicate on the outside of the envelope that confidential materials are included and should specify which statutory exception provision applies.

# **ATTACHMENT A**

**IC 21-9**

## **ARTICLE 9. EDUCATION SAVINGS PROGRAMS**

**IC 21-9-1**

Chapter 1. Purposes

**IC 21-9-1-1**

### **Purposes of article**

Sec. 1. The following are the purposes of this article:

- (1) To encourage education and the means of education.
- (2) To encourage attendance at higher education institutions.
- (3) To provide families additional means of striving for higher education through an education savings program that may be established under this article.
- (4) To help provide the benefits of higher education to the people of Indiana.
- (5) To promote the economic development of the state by creating opportunities for a more highly educated workforce.
- (6) To increase employment opportunities in Indiana.
- (7) To encourage a working partnership among the people of Indiana, including Indiana families, and elementary and secondary schools, higher education institutions, financial institutions, and state government in furthering a greater rate of savings and greater participation in higher education.

*As added by P.L.165-1996, SEC.1. Amended by P.L.85-2000, SEC.1;  
P.L.135-2002, SEC.2.*

**IC 21-9-10**

Chapter 10. Miscellaneous Provisions

**IC 21-9-10-1****Purchases; acquisition and disposition of property**

Sec. 1. The authority may:

- (1) contract for the purchase of supplies, goods, or services; and
- (2) acquire and dispose of any real or personal property without regard to IC 4-13 and IC 5-22.

*As added by P.L. 165-1996, SEC.1. Amended by P.L. 49-1997, SEC.62.*

**IC 21-9-10-2****Exemption of accounts from state taxation**

Sec. 2. (a) Accounts and all earnings or interest on accounts are exempt from taxation in Indiana to the extent that those accounts, earnings, and interest are exempt from federal taxation under the Internal Revenue Code, subject to any penalties that are established for education savings programs under this article.

(b) Distributions under IC 6-3-2-19 from an account used to pay qualified higher education expenses are exempt from the adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7.

*As added by P.L. 165-1996, SEC.1. Amended by P.L. 15-2001, SEC.2; P.L. 135-2002, SEC.29.*

**IC 21-9-10-3****No responsibility by state or higher education institutions to fulfill obligations of authority**

Sec. 3. This article may not be construed as an obligation of the state or a higher education institution to assume any responsibility for fulfilling any obligation of the authority or any education savings program.

*As added by P.L. 165-1996, SEC.1.*

**IC 21-9-10-4****Liberal construction of article**

Sec. 4. This article shall be construed liberally to effectuate the purposes and objectives of this article. The purposes and objectives of this article and the provisions of this article that grant powers shall be broadly interpreted to effectuate the article's purposes and objectives and not to imply any limitation of powers.

*As added by P.L. 165-1996, SEC.1. IC 21-9-2*

**Chapter 2. Definitions****IC 21-9-2-1****Applicability of definitions**

Sec. 1. The definitions in this chapter apply throughout this article.

*As added by P.L. 165-1996, SEC.1.*

**IC 21-9-2-2****"Account" or "individual account"**

Sec. 2. "Account" or "individual account" means a trust account or any other account of an education savings program.

*As added by P.L. 165-1996, SEC.1. Amended by P.L. 135-2002, SEC.3.*

**IC 21-9-2-3****"Account beneficiary"**

Sec. 3. "Account beneficiary" means the individual who is:

(1) designated as the beneficiary of an account at the time the account is established under this article; and

(2) designated as the new beneficiary when beneficiaries are changed.

*As added by P.L. 165-1996, SEC.1. Amended by P.L. 25-1999, SEC.1.*

**IC 21-9-2-4****"Account owner"**

Sec. 4. "Account owner" means the individual, an emancipated minor, a trust, an estate, a partnership, an association, a company, a corporation, or a qualified custodian under the Uniform Transfers to Minors act (IC 30-2-8.5) that is designated as having the right to do the following:

(1) Select or change the designated beneficiary of an account.

(2) Designate a person other than the designated beneficiary as a person to whom funds may be paid from the account.

(3) Receive distributions from the account if no other person is designated.

*As added by P.L. 165-1996, SEC.1. Amended by P.L. 25-1999, SEC.2; P.L. 135-2002, SEC.4.*

**IC 21-9-2-5 Repealed**

*(Repealed by P.L. 135-2002, SEC.30.)*

**IC 21-9-2-6****"Administrative account"**

Sec. 6. "Administrative account" means the administrative account of the trust fund established under IC 21-9-5 that may be funded periodically from appropriations by the general assembly.

*As added by P.L. 165-1996, SEC.1.*

**IC 21-9-2-7 Repealed**

*(Repealed by P.L. 135-2002, SEC.30.)*



**IC 21-9-2-8****"Authority"**

Sec. 8. "Authority" means the Indiana education savings authority created under IC 21-9-3.

*As added by P.L. 165-1996, SEC. 1.*

**IC 21-9-2-9****"Board"**

Sec. 9. "Board" means the board of directors of the authority established under IC 21-9-4.

*As added by P.L. 165-1996, SEC. 1.*

**IC 21-9-2-9.5****"Contribution"**

Sec. 9.5. "Contribution" means a payment directly allocated to an account for the benefit of an account beneficiary or used to pay fees associated with the account.

*As added by P.L. 25-1999, SEC. 3. Amended by P.L. 135-2002, SEC. 5.*

**IC 21-9-2-10****"Contributor"**

Sec. 10. "Contributor" means any individual, emancipated minor, trust, estate, partnership, association, company, corporation, or qualified custodian under the Uniform Transfers to Minors act (IC 30-2-8.5) that makes a deposit for the benefit of an account beneficiary.

*As added by P.L. 165-1996, SEC. 1. Amended by P.L. 135-2002, SEC. 6.*

**IC 21-9-2-10.5 Repealed**

*(Repealed by P.L. 135-2002, SEC. 30.)*

**IC 21-9-2-11****"Education savings program"**

Sec. 11. "Education savings program" means:

(1) a trust program; or

(2) any other program established under IC 21-9-3 that qualifies as a qualified state tuition program under Section 529 of the Internal Revenue Code.

*As added by P.L. 165-1996, SEC. 1. Amended by P.L. 85-2000, SEC. 2; P.L. 135-2002, SEC. 7.*

**IC 21-9-2-12****"Endowment fund"**

Sec. 12. "Endowment fund" means the endowment fund established under IC 21-9-5 for the benefit of the education savings programs that:

(1) may be funded periodically from gifts, bequests, devises, or other donations, or from any source not otherwise provided for; and

(2) may not include any appropriations by the general assembly.

*As added by P.L. 165-1996, SEC.1.*

**IC 21-9-2-13 Repealed**

*(Repealed by P.L. 135-2002, SEC.30.)*

**IC 21-9-2-14**

**"Financial institution"**

Sec. 14. "Financial institution" means a bank, a commercial bank, a national bank, a savings bank, a savings and loan, a thrift, a credit union, an insurance company, a trust company, an investment company, a mutual fund, or similar entity that meets the qualifying requirements established by the authority.

*As added by P.L. 165-1996, SEC.1. Amended by P.L. 135-2002, SEC.8.*

**IC 21-9-2-15**

**"General operating fund"**

Sec. 15. "General operating fund" means the general operating fund established under IC 21-9-5 from which general operating, administrative, and capital expenses (other than those payable from the administrative account) may be paid.

*As added by P.L. 165-1996, SEC.1.*

**IC 21-9-2-16**

**"Higher education institution"**

Sec. 16. For purposes of an education savings program established under this article, "higher education institution" means a postsecondary educational institution that meets the following requirements:

(1) Is authorized by law to provide a program of education beyond the high school level.

(2) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate.

(3) Provides an educational program:

(A) for which the higher education institution awards a baccalaureate or an associate degree;

(B) in which admission is contingent upon the prior attainment of a baccalaureate degree or the equivalent, for which the higher education institution:

(i) awards a postgraduate degree; or

(ii) provides not less than a two (2) year program that is acceptable for full credit toward a postgraduate degree; or

(C) of a two (2) year duration in engineering, mathematics, or the physical or biological sciences, that is designed to prepare the student to work as a technician and in a semiprofessional level in an engineering, a scientific, or other technological field that requires the understanding and application of basic engineering, scientific, or mathematical principles or knowledge.

(4) Is accredited by a regional accrediting agency or association or by an organization recognized by the United States Department of Education, or, if not so accredited is an institution whose credits are accepted on transfer by not less than three (3) institutions that are accredited by a regional accrediting agency or association or by an organization recognized by the United States Department of Education, with the credits accepted on the same basis as if the credits were transferred from an accredited institution.

*As added by P.L. 165-1996, SEC.1. Amended by P.L.135-2002, SEC.9.*

#### **IC 21-9-2-16.5**

##### **"Internal Revenue Code"**

Sec. 16.5. "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States as amended from time to time.

*As added by P.L. 135-2002, SEC.10.*

#### **IC 21-9-2-17 Repealed**

*(Repealed by P.L. 135-2002, SEC.30.)*

#### **IC 21-9-2-17.5**

##### **"Member of the family"**

Sec. 17.5. (a) "Member of the family" means an individual who is one (1) of the following relatives of a designated beneficiary:

- (1) A lineal descendant of the designated beneficiary.
- (2) A lineal ancestor of the designated beneficiary.
- (3) A brother, sister, stepbrother, or stepsister of the designated beneficiary.
- (4) A stepparent of the designated beneficiary.
- (5) A stepchild of the designated beneficiary.
- (6) A niece or nephew of the designated beneficiary.
- (7) An aunt or uncle of the designated beneficiary.
- (8) An individual related to the designated beneficiary as follows:
  - (A) A daughter-in-law.

- (B) A son-in-law.
- (C) A mother-in-law.
- (D) A father-in-law.
- (E) A sister-in-law.
- (F) A brother-in-law.
- (G) A first cousin.

(9) The spouse of the designated beneficiary or the spouse of an individual described in subdivisions (1) through (8).

(b) For purposes of this section, an adopted child of an individual is treated as a natural child of the individual.

(c) For purposes of this section, the terms brother and sister include a brother or sister by the half blood.

*As added by P.L.25-1999, SEC.5. Amended by P.L.135-2002, SEC.11.*

#### **IC 21-9-2-18**

##### **"Program account"**

Sec. 18. "Program account" means the program account of the trust fund established under IC 21-9-5. A program account is comprised of:

- (1) trust accounts; and
- (2) other contributions or money received in trust by the authority together with allocable earnings (whether interest, gains, or dividends) and other contributions appropriately made or money properly allocable to the program account.

*As added by P.L.165-1996, SEC.1. Amended by P.L.135-2002, SEC.12.*

#### **IC 21-9-2-19 Repealed**

*(Repealed by P.L. 135-2002, SEC.30.)*

#### **IC 21-9-2-19.5**

##### **"Qualified higher education expenses"**

Sec. 19.5. "Qualified higher education expenses" has the meaning set forth in Section 529 of the Internal Revenue Code.

*As added by P.L.25-1999, SEC.6. Amended by P.L.135-2002, SEC.13.*

#### **IC 21-9-2-19.7**

##### **"Rollover distribution"**

Sec. 19.7. "Rollover distribution" means a rollover as defined in Section 529 of the Internal Revenue Code.

*As added by P.L.25-1999, SEC.7. Amended by P.L.135-2002, SEC.14.*

**IC 21-9-2-20 Repealed**

*(Repealed by P.L.85-2000, SEC.6.)*

**IC 21-9-2-21 Repealed**

*(Repealed by P.L.85-2000, SEC.6.)*

**IC 21-9-2-22 Repealed**

*(Repealed by P.L.135-2002, SEC.30.)*

**IC 21-9-2-22.1**

**"Trust account"**

Sec. 22.1. "Trust account" means a trust account established by a contributor in the trust program by or for the benefit of an account beneficiary.

*As added by P.L.135-2002, SEC.15.*

**IC 21-9-2-23**

**"Trust fund"**

Sec. 23. "Trust fund" means the trust fund created under IC 21-9-5 for purposes of any trust program under IC 21-9-7 and IC 21-9-8.

*As added by P.L.165-1996, SEC.1. Amended by P.L.135-2002, SEC.16.*

**IC 21-9-2-24**

**"Trust program"**

Sec. 24. "Trust program" means the Indiana family college savings trust program established under IC 21-9-3.

*As added by P.L.165-1996, SEC.1.*

**IC 21-9-3**

Chapter 3. Indiana Education Savings Authority

**IC 21-9-3-1**

**Creation of authority**

Sec. 1. The Indiana education savings authority is created.

*As added by P.L.165-1996, SEC.1.*

**IC 21-9-3-2**

**Authority as body corporate and politic; not agency of state**

Sec. 2. (a) The authority is a body corporate and politic.

(b) The authority:

(1) is not an agency of the state; and

(2) is an instrumentality of the state performing essential governmental functions.

*As added by P.L. 165-1996, SEC. 1.*

### **IC 21-9-3-3**

#### **Establishment of education savings programs**

Sec. 3. The authority may establish any number of education savings programs.

*As added by P.L. 165-1996, SEC. 1. Amended by P.L. 85-2000, SEC. 3;  
P.L. 135-2002, SEC. 17.*

### **IC 21-9-3-4**

#### **Exemptions from state taxation**

Sec. 4. Because the management and operation of the education savings programs and all funds and accounts established under this article constitute the performance of an essential public function, the following are exempt from taxation by the state and by any political subdivision of the state:

(1) The authority's management and operations.

(2) The authority's property and assets.

(3) All property and assets held by or for the authority except individual accounts.

(4) The investment income and earnings (whether interest, gains, or dividends) on:

(A) the authority's property and assets; and

(B) all property and assets held by or for the authority; including all funds and accounts established under this article except individual accounts.

*As added by P.L. 165-1996, SEC. 1.*

### **IC 21-9-3-5**

#### **Power to contract**

Sec. 5. The authority may contract with public or private entities or persons for the provision of all or any portion of the services the board considers necessary for the management and operations of the authority, including the education savings programs and all funds and accounts of the authority.

*As added by P.L. 165-1996, SEC. 1.*

### **IC 21-9-4**

Chapter 4. Authority Board of Directors and Officers

### **IC 21-9-4-1**

**Board of directors; members; vacancy; chairman; removal**

Sec. 1. (a) The board of directors of the authority is established. The board consists of the following:

(1) The following four (4) ex officio members or directors:

- (A) The treasurer of state.
- (B) The state superintendent of public instruction.
- (C) The Indiana commissioner of higher education.
- (D) The budget director.

(2) Five (5) appointed members or directors who:

- (A) are appointed by the governor; and
- (B) have knowledge, skill, and experience in academic, business, financial, or education fields.

(b) During a member's term of service on the board, an appointed member of the board may not be an official or employee of the state.

(c) Not more than three (3) of the appointed members of the board may belong to the same political party.

(d) An appointed member serves a four (4) year term. An appointed member shall hold over after the expiration of the member's term until the member's successor is appointed and qualified.

(e) The governor may reappoint an appointed member of the board.

(f) A vacancy shall be filled for the balance of an unexpired term in the same manner as the original appointment.

(g) The treasurer of state shall serve as chairman of the board. The board shall annually elect one (1) of its ex officio members as vice chairman, and may elect any other officer that the board desires.

(h) The governor may remove an appointed member for misfeasance, malfeasance, willful neglect of duty, or other cause after notice and a public hearing, unless the member expressly waives the notice and hearing in writing.

*As added by P.L. 165-1996, SEC. 1.*

#### **IC 21-9-4-2**

##### **Salary; reimbursement**

Sec. 2. (a) An appointed member of the board is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). Each appointed member is, however, entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties.

(b) An ex officio member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties.

*As added by P.L. 165-1996, SEC. 1.*

#### **IC 21-9-4-3**

##### **Designation of ex officio member**

Sec. 3. An ex officio member of the board may designate a person to serve as an ex officio member of the board in the absence of the ex officio member.

*As added by P.L. 165-1996, SEC. 1.*

#### **IC 21-9-4-4**

##### **Power of board to employ manager and delegate functions**

Sec. 4. The board may:

- (1) employ a manager, who is not a member of the board; and
- (2) delegate necessary and appropriate functions and authority to the manager.

*As added by P.L. 165-1996, SEC. 1.*

#### **IC 21-9-4-5**

##### **Quorum; presence at meetings; authority to act; meetings**

Sec. 5. (a) Five (5) members of the board are a quorum for:

- (1) the transaction of business at a meeting of the board; or
- (2) the exercise of a power or function of the authority.

(b) This subsection applies to a meeting of the board at which at least five (5) members of the board are physically present at the place where the meeting is conducted. A member of the board may participate in a meeting of the board by using a means of communication that permits:

- (1) the member;
- (2) all other members participating in the meeting; and
- (3) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting. A member who participates in a meeting described in this subsection is considered to be present at the meeting. If a meeting is held under this subsection, the memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of each member who was physically present at the place where the meeting was conducted, who participated in the meeting by using a means of communication described in this subsection, and who was absent from the meeting.



(c) The affirmative vote of a majority of all the members of the board who are present is necessary for the authority to take action. A vacancy in the membership of the board does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. An action taken by the board under this article may be authorized by:

(1) resolution at any regular or special meeting; or

(2) unanimous consent of all the members who have not abstained.

A resolution takes effect immediately upon adoption and need not be published or posted.

(d) The board shall meet at the call of the chairman and as provided in the bylaws of the authority.

(e) Meetings of the board may be held anywhere in Indiana.

*As added by P.L. 165-1996, SEC. 1.*

#### **IC 21-9-4-6**

##### **Authority as public agency; board as governing body**

Sec. 6. (a) The authority is a public agency for purposes of IC 5-14-1.5 and IC 5-14-3.

(b) The board is a governing body for purposes of IC 5-14-1.5.

*As added by P.L. 165-1996, SEC. 1.*

#### **IC 21-9-4-7**

##### **Powers of board**

Sec. 7. In addition to any power granted by this article, the board has all powers necessary or convenient to carry out and effectuate the purposes and objectives of this article, the purposes and objectives of the education savings programs, and the powers delegated by law or executive order, including the following powers:

(1) To develop and implement the education savings programs and, notwithstanding any provision in this article to the contrary, other services consistent with the purposes and objectives of this article, through:

(A) rules or emergency rules adopted under IC 4-22-2; or

(B) rules, guidelines, procedures, or policies established by the board and approved by the higher education commission.

(2) To conform the education savings programs and, notwithstanding any provision in this article to the contrary, services consistent with the purposes and objectives of this article, to the requirements of a qualified state tuition program set forth in Section 529 of the Internal Revenue Code and all applicable federal regulations, through:

(A) rules or emergency rules adopted under IC 4-22-2; or

- (B) guidelines, procedures, or policies established by the board.
- (3) To retain professional services, including the following:
  - (A) Financial advisers and managers.
  - (B) Custodians and other fiduciaries.
  - (C) Investment advisers and managers.
  - (D) Accountants and auditors.
  - (E) Consultants or other experts.
  - (F) Actuarial services providers.
  - (G) Attorneys.
- (4) To establish minimum account deposit amounts (both initial and periodic).
- (5) To employ persons, if the board chooses, and as may be necessary, and to fix the terms of their employment.
- (6) To recommend legislation to the governor and general assembly.
- (7) To apply for designation as a tax exempt entity under the Internal Revenue Code.
- (8) To adopt such rules, bylaws, procedures, guidelines, and policies as are necessary to carry out the education savings programs and services and the authority's management and operations.
- (9) To sue and be sued.
- (10) To provide or facilitate provision of benefits and incentives for the benefit of qualified beneficiaries, account owners, contributors, or account beneficiaries as the board's resources allow or as are directed or provided for by the general assembly.
- (11) To conform the education savings programs to federal tax advantages or incentives, as in existence periodically, to the extent consistent with the purposes and objectives of this article.
- (12) To interpret, in rules, policies, guidelines, and procedures, the provisions of this article broadly in light of the purposes and objectives of this article.
- (13) To charge, impose, and collect administrative fees and service charges in connection with any agreement, contract, or transaction under an education savings program or services.
- (14) To have perpetual succession.

*As added by P.L. 165-1996, SEC. 1. Amended by P.L. 25-1999, SEC. 8;*

*P.L.135-2002, SEC.18.*

**IC 21-9-4-8**

**Annual report by authority**

Sec. 8. The authority shall prepare an annual report for the education savings programs and services and promptly transmit the annual report to the governor and the general assembly. The authority shall make available, upon request, copies of the annual report to qualified beneficiaries, account owners, and the public. A report transmitted under this section to the general assembly must be in an electronic format under IC 5-14-6.

*As added by P.L. 165-1996, SEC.1. Amended by P.L.135-2002, SEC.19; P.L.28-2004, SEC.157.*

**IC 21-9-4-9**

**Acceptance of gifts, bequests, donations, and devises by authority**

Sec. 9. (a) The authority may accept gifts, bequests, donations, and devises of personal and real property:

(1) as trustees for the maintenance, use, or benefit of the authority, the education savings programs, or the endowment fund; or

(2) to be administered for other public or charitable purposes for the benefit or use of account owners or account beneficiaries.

(b) The authority may receive, accept, hold, administer, and use any property transferred to the authority by gift, bequest, donation, or devise in accordance with the terms, conditions, obligations, liabilities, and burdens imposed on the gift, bequest, donation, or devise if, in the judgment of the board, the action is in the best interest of the authority, the education savings programs, the endowment fund, account owners, contributors, or account beneficiaries, as applicable.

(c) The authority may accept a gift, devise, donation, or bequest made for the purpose of providing an annuity on conditions consistent with the conditions set forth in IC 20-12-4-2 (relating to boards of trustees of state educational institutions).

(d) The authority may, if not inconsistent with the terms and conditions of a gift of real property:

(1) sell, convey, or otherwise dispose of the real property; and

(2) invest, reinvest, or use the proceeds as, in the judgment of the board, is of the greatest benefit to the authority, the education savings programs, the endowment fund, account beneficiaries, and account owners.

(e) When acting under the powers granted by this article and also with respect to the money in the endowment fund and the program account as provided in IC 21-9-5 and IC 21-9-7, the members serve as trustees of private trusts, subject to the terms and conditions of the trust program or the gift, bequest, donation, or devise and law applicable to private trusts.

*As added by P.L. 165-1996, SEC.1. Amended by P.L.135-2002,*

SEC.20.

**IC 21-9-4-10**

**Duties of manager of authority**

Sec. 10. A manager or another person designated by resolution of the authority:

- (1) shall keep a record of the proceedings of the authority;
- (2) shall be custodian of:
  - (A) all books, documents, and papers filed with the authority; and
  - (B) the minute book or journal of the authority; and
- (3) may copy all minutes and other records and documents of the authority and may give certificates of the authority to the effect that the copies are true copies. A person who deals with the authority may rely upon the certificates.

*As added by P.L. 165-1996, SEC. 1.*

**IC 21-9-4-11**

**Surety bond**

Sec. 11. Before the adoption and implementation of any education savings program, the:

- (1) chairman;
- (2) vice chairman;
- (3) manager; and
- (4) any officer elected by the authority or member of the authority authorized by resolution to handle funds or sign checks; shall execute a surety bond in the penal sum of one hundred thousand dollars (\$100,000). The surety bond shall be conditioned upon the faithful performance of the duties of the office of the principal and shall be executed by a surety company authorized to transact business in Indiana. The authority shall pay the cost of the bonds.

*As added by P.L. 165-1996, SEC. 1.*

**IC 21-9-4-12**

**Duties of authority**

Sec. 12. The authority shall do the following:

- (1) Provide the board and each member, officer, employee, consultant, counsel, and agent of the authority or the board a defense in a suit arising out of the performance of duties for or on behalf of the authority or the board, if the board determines that the duties were performed in good faith.
- (2) Save a person described in subdivision (1) or the board harmless from any liability, cost, or damage in connection with an action arising out of the performance of duties for or on behalf of the authority or the board, including the payment of any legal fees, except

where the liability, cost, or damage is predicated on, or arises out of, the bad faith of the person or the board, or is based on the person's or board's malfeasance in the performance of duties.

*As added by P.L. 165-1996, SEC. 1.*

#### **IC 21-9-4-13**

##### **Conflicts of interest**

Sec. 13. Notwithstanding any other law, it is not a conflict of interest or violation of any other law for a person to serve as a member of the authority. However, a member shall disclose a conflict of interest relating to actions of the authority as required and in a manner provided by IC 35-44-1-3.

*As added by P.L. 165-1996, SEC. 1.*

#### **IC 21-9-5**

##### **Chapter 5. Funds and Accounts**

#### **IC 21-9-5-1**

##### **Establishment of funds**

Sec. 1. The following are established:

- (1) The general operating fund.
- (2) The endowment fund.
- (3) The trust fund and, in the trust fund, the following:
  - (A) The administrative account.
  - (B) The program account.

*As added by P.L. 165-1996, SEC. 1. Amended by P.L. 85-2000, SEC. 4.*

#### **IC 21-9-5-2**

##### **Investment policies for general operating fund, administrative account, and other money**

Sec. 2. The authority shall establish and implement investment policies in accordance with IC 5-13 for the following:

- (1) Money in the general operating fund.
- (2) Money in the administrative account.
- (3) Any other money of the authority other than money in:
  - (A) the endowment fund; and
  - (B) the program account.

*As added by P.L. 165-1996, SEC. 1. Amended by P.L. 85-2000, SEC. 5.*

**IC 21-9-5-3 Repealed**

*(Repealed by P.L.85-2000, SEC.6.)*

**IC 21-9-5-4****Investment policies for endowment fund and program account**

Sec. 4. The board shall establish and implement investment policies for money in:

(1) the endowment fund; and

(2) the program account;

for investment in the manner provided by IC 30-4-3-3.

*As added by P.L.165-1996, SEC.1.*

**IC 21-9-5-5****Use of trust fund**

Sec. 5. The trust fund and other property of the authority must be preserved, invested, and expended only under this article and may not be used for any other purpose. The trust fund shall be held in trust for account owners and account beneficiaries.

*As added by P.L.165-1996, SEC.1.*

**IC 21-9-5-6 Repealed**

*(Repealed by P.L.135-2002, SEC.30.)*

**IC 21-9-5-7****Criteria for management of assets in trust fund**

Sec. 7. Criteria for management of assets in the trust fund, including investment of assets, must provide for both asset protection and income growth relative to expected tuition costs while providing for the actuarial soundness of the trust fund.

*As added by P.L.165-1996, SEC.1.*

**IC 21-9-5-8****Payment of authority's expenses**

Sec. 8. (a) General operating, administrative, and capital expenses of the authority may be paid from amounts appropriated for those purposes by the general assembly. Appropriations must be deposited in either the administrative account or the general operating fund, as the board determines to be appropriate.

(b) Subject to IC 21-9-6-3, money in the administrative account shall be used first to pay the general operating, administrative, and capital expenses of the authority. Before money in the program account may be used for these expenses, the authority must exhaust all other funds available to the authority, including money in the endowment fund and the administrative account.

*As added by P.L.165-1996, SEC.1.*

**IC 21-9-5-9**

**Annual audit of authority**

Sec. 9. (a) The funds, accounts, management, and operations of the authority are subject to annual audit by an independent public accounting firm retained by the board.

(b) The authority shall promptly transmit copies of each annual audit to the governor and the general assembly. Upon request, the authority shall make available copies of the audit to qualified beneficiaries, account owners, and the public.

*As added by P.L.165-1996, SEC.1.*

**IC 21-9-6 Repealed**

*(Repealed by P.L.85-2000, SEC.6.)*

**IC 21-9-7**

Chapter 7. Indiana Family College Savings Programs

**IC 21-9-7-1****Powers of board**

Sec. 1. In addition to any other powers granted by this article, the board has all powers necessary or convenient to carry out and effectuate the purposes and objectives of this chapter and IC 21-9-8, the purposes and objectives of an education savings program that may be established under this article, and the powers delegated by other laws or executive orders, including the following:

(1) To establish policies and procedures to govern distributions from accounts that are not:

(A) made on account of the death or disability of an account beneficiary;

(B) made on account of the receipt of a scholarship (or allowance or payment described in Section 135(d)(1)(B) or (C) of the Internal Revenue Code) by the account beneficiary to the extent the amount of the distribution does not exceed the amount of the scholarship, allowance, or payment; or

(C) rollovers.

(2) To establish penalties for withdrawals of money from accounts that are not used exclusively for the qualified higher education expenses of an account beneficiary unless a circumstance described in subdivision (1) applies.

(3) To establish policies and procedures regarding the transfer of individual accounts and the designation of substitute account beneficiaries.

(4) To establish policies and procedures for withdrawal of money from accounts for, or in reimbursement of, qualified higher education expenses.

(5) To enter into agreements with account owners, account beneficiaries, and contributors, with the agreements naming:

(A) the account owner; and

(B) the account beneficiary.

(6) To establish accounts for account beneficiaries. However:

(A) the authority shall establish a separate account for each account beneficiary;  
and

(B) an individual may be the beneficiary of more than one (1) account.

(7) To enter into agreements with financial institutions relating to accounts as well as deposits, withdrawals, penalties, allocation of benefits or incentives, and transfers of accounts, account owners, and account beneficiaries.

(8) To conform the education savings program to federal tax advantages or incentives, as the advantages or incentives may exist periodically, to the extent consistent with the purposes and objectives of this article.

(9) To interpret, in rules, policies, guidelines, and procedures, the provisions of this article broadly considering the purposes and objectives of this article.

*As added by P.L. 165-1996, SEC. 1. Amended by P.L. 25-1999, SEC. 9;  
P.L. 135-2002, SEC. 21.*

#### **IC 21-9-7-2**

##### **Consideration of money in accounts by state student assistance commission**

Sec. 2. The amount of money available in an account and the proposed use of money in an account on behalf of an account beneficiary may not be considered by the state student assistance commission under IC 20-12-21 or IC 20-12-21.7 when determining award amounts under a program administered by the state student assistance commission.

*As added by P.L. 165-1996, SEC. 1. Amended by P.L. 135-2002, SEC. 22.*

#### **IC 21-9-7-3**

##### **Account not an asset**

Sec. 3. An account is not an asset for the purposes of IC 6-4.1-2.

*As added by P.L. 165-1996, SEC. 1. Amended by P.L. 135-2002, SEC. 23.*

#### **IC 21-9-7-4**

##### **Property of account owner**

Sec. 4. Money deposited in an account by the account owner or a contributor and investment returns on an account are the property of the account owner.

*As added by P.L. 165-1996, SEC. 1.*

#### **IC 21-9-7-5 Repealed**

*(Repealed by P.L. 135-2002, SEC. 30.)*



**IC 21-9-7-6 Repealed**

*(Repealed by P.L. 135-2002, SEC.30.)*

**IC 21-9-7-7****Use of funds as loan security prohibited**

Sec. 7. Funds held in an account of an education savings program that may be established under this article may not be used by an account owner or account beneficiary as security for a loan.

*As added by P.L.25-1999, SEC.12. Amended by P.L.135-2002, SEC.24.*

**IC 21-9-7-8****Maximum account balance**

Sec. 8. (a) Contributions to an account may not exceed the amount necessary to provide for the qualified higher education expenses of the account beneficiary.

(b) The authority shall adopt rules or emergency rules under IC 4-22-2 to determine the maximum account balance applicable to all accounts of account beneficiaries with the same expected year of enrollment.

*As added by P.L.25-1999, SEC.13. Amended by P.L.135-2002, SEC.25.*

**IC 21-9-7-9****Authorization to adopt rules to establish a penalty**

Sec. 9. The authority may adopt rules or emergency rules under IC 4-22-2 to establish a penalty for a distribution that is not used exclusively for the qualified higher education expenses of an account beneficiary. However, the authority may not establish a penalty for distributions described in IC 21-9-7-1(1).

*As added by P.L.25-1999, SEC.14. Amended by P.L.135-2002, SEC.26.*

**IC 21-9-8**

Chapter 8. Indiana Family College Savings Trust Program

**IC 21-9-8-1****College choice plan; administration of trust funds**

Sec. 1. (a) The board shall establish a trust program known as the college choice plan.

(b) The board shall administer any trust fund established under this article, including the college choice plan, in a manner designed to be actuarially sound, so that the assets of the trust fund are sufficient to defray the obligations of the trust fund, including the program account.

*As added by P.L.165-1996, SEC.1. Amended by P.L.135-2002, SEC.27.*

**IC 21-9-8-2**

**Deposits of money; division of trust fund into separate accounts**

Sec. 2. (a) The money received under the trust program, including the college choice plan, by the authority from account owners and contributors for the benefit of account beneficiaries shall be deposited in the program account.

(b) Any appropriations made by the general assembly for:

- (1) operating, administrative, and capital expenses;
- (2) benefits and incentives; or
- (3) any other purpose related to the trust program or the trust fund;

shall be deposited in the administrative account.

(c) The money received under the trust program by the authority by gift, bequest, donation, or devise or from a source that is not described in subsection (a) or (b) shall be deposited:

- (1) in the endowment fund for the benefit of the trust program; or
- (2) to individual accounts as determined by the board to be appropriate.

(d) The board may divide the trust fund into further separate accounts. The accounts of the trust fund may be divided into separate subaccounts as the board may determine periodically.

*As added by P.L.165-1996, SEC.1. Amended by P.L.135-2002, SEC.28.*

**IC 21-9-9 Repealed**

*(Repealed by P.L.135-2002, SEC.30.)*

P.L.192-2006

[H.1029. Approved March 28, 2006.]

AN ACT to amend the Indiana Code concerning education finance.

*Be it enacted by the General Assembly of the State of Indiana:...*

**SECTION 4. IC 6-3-3-12 IS ADDED TO THE INDIANA CODE**

**AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**

**JANUARY 1, 2007]:** Sec. 12. (a) As used in this section, "college choice 529 education savings plan" refers to a college choice 529 investment plan established under IC 21-9.

(b) As used in this section, "taxpayer" means:

- (1) an individual filing a single return; or
- (2) a married couple filing a joint return.

(c) A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for a taxable year equal to the least of the following:

(1) Twenty percent (20%) of the amount of each contribution made by the taxpayer to a college choice 529 education savings plan during the taxable year.

(2) One thousand dollars (\$1,000).

(3) The amount of the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by IC 6-3-1 through IC 6-3-7.

(d) A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.

(e) A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this section.

(f) To receive the credit provided by this section, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this section.

## **ATTACHMENT B – FORM OF AGREEMENT**

### **MANAGEMENT AGREEMENT**

This **MANAGEMENT AGREEMENT** (“**Agreement**”), dated as of September \_\_, 2007, is entered into by and between the INDIANA EDUCATION SAVINGS AUTHORITY (the “**Authority**”) and \_\_\_\_\_, a [insert state of incorporation] (“**Contractor**”).

#### W I T N E S S E T H:

**WHEREAS**, Title 21 of the Indiana Code (“**IC**”), as amended from time to time (“**Statute**”), provides for the establishment of a qualified tuition program under Section 529 of the United States Internal Revenue Code of 1986, as amended from time to time, (“**Code**”) entitled the CollegeChoice 529 Investment Plan (“**Program**”);

**WHEREAS**, pursuant to IC §21-9-4-7, the Authority is charged with developing and implementing the Program and the Authority is authorized to contract with the Contractor to provide the program management services contemplated hereby;

**WHEREAS**, pursuant to IC § 21-9-4-7, the Authority is charged with implementing the Program through the use of financial institution(s) to act as depositories and managers and the Authority is authorized to contract with the Contractor to provide the investment management services contemplated hereby;

**WHEREAS**, the Contractor will perform the various administration, marketing, investment management and other services as more fully referred to and described below in the implementation and operation of the Program.

**NOW THEREFORE**, in consideration of the foregoing and of the mutual promises set forth herein, and intending to be legally bound hereby, the Authority and the Contractor hereby agree as follows:

#### 1. DEFINITIONS; RULES OF CONSTRUCTION.

##### (a) Definitions.

The following terms used in this Agreement will have the respective meanings set forth below:

“**Account**” shall mean a separate account established in accordance with the Statute to fund Qualified Higher Education Expenses.

“**Account Owner**” shall mean an organization described in Section 501(c) (3) of the Code that is exempt from federal income taxation pursuant to Section 501(a) of the Code, an individual, a firm, a corporation, a state or local government organization, or a legal representative of any of the foregoing who has entered into a Participation Agreement pursuant to the Code for the advance payment of higher education costs on behalf of a Beneficiary.

**“Administrative Fee”** shall mean the Authority’s share of the Management Fee set forth on Exhibit C to this Agreement.

**“Administrative Fund”** shall mean the fund established by the Authority for the purpose of holding the Administrative Fee and any other fees and Account Owner costs allocated to the Authority pursuant to this Agreement.

**“Advisor Plan”** shall mean the college savings plan established as part of the Program in which accounts may be established only through a Financial Professional.

**“Age Band”** shall mean each portion of the assets of the Program within the Managed Allocation Option established for Beneficiaries born in specified years in accordance with the Allocation Guidelines.

**“Applicable Law”** shall mean all applicable laws, judgments, decrees, injunctions, writs and orders of any court, tribunal, arbitrator or Governmental Authority and rules, regulations, orders, licenses and permits of any Governmental Authority.

**“Beneficiary”** shall have the same meaning as the term **Account Beneficiary** set forth in the Statute on the date hereof.

**“Business Day”** shall mean a day on which the New York Stock Exchange is open for trading.

**“Final Termination Date”** shall mean the date on which the Contractor no longer holds any assets under this Agreement and the Contractor no longer provides Services with respect to any Accounts.

**“Financial Professional”** shall mean an independent financial consultant, a broker-dealer or bank or a “fee-only advisor.

**“Governmental Authority”** shall mean any federal, state, local, municipal or other governmental department, commission, district, Authority, bureau, agency, regulatory body, court, tribunal or other instrumentality (or any officer or representative thereof) of competent jurisdiction.

**“Investment Options”** shall mean the means the investment options listed on Schedule A hereto and made available under the Program to Account Owners investing in the Trust.

**“IRS”** shall mean the United States Internal Revenue Service.

**“Losses”** shall mean all losses, costs, claims, causes of action, liabilities, penalties, damages and expenses (including, without limitation, reasonable attorney’s fees and disbursements), excluding consequential, punitive and special damages.

**“Management Fee”** shall mean the fee payable to the Contractor for the Services as set forth in Exhibit C.

**“Material Adverse Effect”** shall mean a material adverse effect on (a) the business, operations or financial condition of the Contractor, the Authority or the Program, (b) the ability of any party to this Agreement to perform its material obligations under this Agreement or (c) the validity or enforceability of a material provision of this Agreement or the material rights or remedies of any party to this Agreement.

**“Media Materials”** shall mean the Program Logo, any slogan developed specifically for the Program, any trade names, trade marks or service marks created specifically for the Program, any copyrighted materials relating solely or primarily to the Program, including materials contained in the Program Disclosure Materials that are related specifically to the State, the Authority or the Program, web site content related specifically to the Program and marketing, advertising and public relations materials that are specific to the Program

**“Mutual Fund”** shall mean any mutual fund approved by the Authority as an investment vehicle for assets of the Program.

**“Net Asset Value”** shall mean the price per share in any Age Band or Mutual Fund, respectively. Net Asset Value per share will be determined when regular trading closes on the New York Stock Exchange on each Business Day. Net Asset Value per share will be computed by dividing the value of an Age Band’s or a Mutual Fund’s, as the case may be, net assets less its liabilities by the number of outstanding shares of such Age Band or Mutual Fund. The Net Asset Value per share of each Age Band will be based upon the Net Asset Value per share of each of the Mutual Funds in which it invests.

**“Non-Qualified Withdrawal”** shall mean a withdrawal from an Account other than (i) a Qualified Withdrawal, (ii) a withdrawal by reason of the death or disability of a Beneficiary or (iii) a withdrawal made in connection with the receipt by the Beneficiary of a scholarship.

**“Participation Agreement”** shall mean the agreement to be entered into by the Program and an Account Owner with respect to an Account in a form mutually agreed upon by the Contractor and the Authority, as amended from time to time with the approval of the Contractor and the Authority.

**“Person”** shall mean any individual, corporation, partnership, joint venture, limited liability company, joint stock company or other similar organization, trust or any other entity, an unincorporated organization, a government or any agency or political subdivision thereof, a court, or any other legal entity whether acting in an individual, fiduciary or other capacity.

**“Program Disclosure Documents”** shall mean the document(s) describing the Program prepared for distribution to persons in connection with their opening of Accounts and entering into Participation Agreements and to Account Owners and others having an interest in the Program.

**“Program Assets”** shall mean all assets of the Program excluding the assets held in the Administrative Account.

**“Program Logo”** shall mean the logo which has been designed and developed specifically for the Program.

**“Program Materials”** shall mean all records, books, correspondence, papers and files relating solely or primarily to the Program, whether or not in the possession of the Authority, including, without limitation, all lists, compilations and summaries of Account Owners, Beneficiaries or prospective Account Owners who contact the Contractor for the purpose of expressing an interest in the Program.

**“Program Records”** shall mean, collectively, the Program Materials and the Media Materials.

**“Program Start Date”** shall mean the earlier of (i) December 31, 2007, and (ii) the date on which all conditions set forth in Section 10 have been satisfied or waived.

**“Qualified Higher Education Expenses”** shall have the meaning set forth in Section 529(e) (3) of the Code.

**“Qualified Withdrawal”** shall mean a withdrawal from an Account to pay the Qualified Higher Education Expenses of the Beneficiary of the Account.

**“RFP”** shall mean the Request for Proposals for Investment and Administrative Services issued by the Authority on June 11, 2007.

**“Section 529”** shall mean Section 529 of the Code.

**“Services”** shall mean the program management services to be provided to the Program by the Contractor, which are described in the RFP and this Agreement.

**“State”** shall mean the State of Indiana.

**“State Tax Department”** shall mean the Indiana Department of Revenue.

**“Statute”** shall have the meaning set forth in the recitals to this Agreement.

**“Transition Period”** shall mean the period of time following the Effective Date of this Agreement and the Program Start Date.

**“Transition Plan”** shall mean the implementation plan attached hereto as Schedule E designed to ensure the orderly transfer to the Contractor of the program management of the CollegeChoice 529 Investment Plan.

**“Trust”** shall mean any trust established by the Authority for the purpose of holding Program Assets.

(b) Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

Singular words will connote the plural as well as the singular, and vice versa (except as indicated), as may be appropriate. Masculine words such as “he,” “his,” and “him” will connote the feminine as well as the masculine, and vice versa, as may be appropriate.

Unless otherwise indicated, references within this Agreement to articles, sections, paragraphs or clauses are references to articles, sections, paragraphs or clauses in or to this Agreement.

The words “herein,” “hereof” and “hereunder” and other words of similar import used in this Agreement refer to this Agreement as a whole and not to any particular article, section, paragraph or clause.

References to any Person will include such Person, its successors and permitted assigns.

2. ENGAGEMENT OF THE CONTRACTOR AS PROGRAM MANAGER; TERM; SUBCONTRACTING OF SERVICES; EMPLOYEES OF CONTRACTOR.

(a) Engagement by the Authority. The Contractor shall provide program management services to the Program as described in the RFP and the Contractor’s proposal in accordance with the terms and conditions of this Agreement and the Exhibits attached to this Agreement and incorporated as part of this Agreement as follows:

- Exhibit A: Indiana Education Savings Authority Request for Proposals for Investment and Administrative Services dated June 11, 2007.
- Exhibit B: The Contractor’s Technical Proposal dated \_\_\_\_\_, 2007.
- Exhibit C: The Contractor’s Financial Proposal dated \_\_\_\_\_, 2007.
- Schedule A: Financial Services
- Schedule B: Account Administration
- Schedule C: Marketing
- Schedule D: Customer Service
- Schedule E: Transition Plan

(b) Inconsistencies. If there are any inconsistencies between the Agreement and any of the Exhibits, the terms of this Agreement shall prevail. If there are any inconsistencies between any of the Exhibits or Schedules, the terms of Exhibit A shall prevail.

(c) Term. The term of this Agreement (the “**Term**”) shall commence on the Program Start Date and shall continue until the close of business on the fifth [seventh] anniversary of the Program Start Date. At the sole option of the Authority, this Agreement may be extended for up to two (2) additional one-year terms at the end of the Term, provided the Authority notifies the Contractor in writing of its intention to do so at least one hundred and eighty (180) days prior to the scheduled expiration date. Any extension of the Term and any renewal term will be affected through an amendment to this Agreement.

(d) Subcontracting of Services. **[if applicable to Contractor’s proposal]**



The Authority hereby acknowledges that the Contractor shall have the right to subcontract (i) services relating to marketing, information and distribution of the Program; (ii) transfer agency services required of the Contractor hereunder; and (iii) custody, fund accounting and certain administrative services required of the Contractor hereunder. The Contractor may not subcontract any portion of the services provided under this Agreement without obtaining the prior written approval of the Authority, nor may the Contractor assign this Agreement or any of its rights or obligations hereunder, without the prior written approval of the Authority. Any such subcontract or assignment shall be subject to any terms and conditions that the Authority deems necessary to protect the interest of the State. The Authority shall not be responsible for the fulfillment of the Contractor's obligations to subcontractors.

(e) Employees of Contractor. The Contractor shall utilize its personnel to perform the Services required under this Agreement, and such personnel shall at all times remain employees or consultants of the Contractor, subject solely to the Contractor's direction and control. The Contractor shall alone retain full liability to its employees and consultants in all respects, including for their welfare, salaries, fringe benefits, legally required employer contributions and tax obligation. No facility of the Contractor used in performing Services shall be deemed to be transferred, assigned, conveyed or leased to the Authority or the Program by such performance or use pursuant to this Agreement. The Contractor warrants that all employees engaged in providing the Services shall be qualified to perform the Services, shall be properly licensed and otherwise authorized to do so under all Applicable Law.

### 3. STANDARD OF CARE.

(a) The Contractor acknowledges that it has fiduciary duties to the Authority, the Program, the Trust, the Account Owners and the Beneficiaries.

(b) The Contractor will perform the Services, and discharge its responsibilities, duties and obligations under this Agreement, in a manner that is consistent with the Program investment objective set forth in Section 5(a) and with the same degree of care and skill under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(c) The Contractor agrees to discharge its duties with respect to the Program and the Trust in the interest of the Authority, the Account Owners and the Beneficiaries of the Program.

### 4. THE INVESTMENT OPTIONS, THE MUTUAL FUNDS AND THE ADMINISTRATIVE FUND; INVESTMENT OF PROGRAM ASSETS; CONTRIBUTIONS; CREDITING OF CONTRIBUTIONS; WITHDRAWALS.

(a) The Investment Options, the Mutual Funds and the Administrative Fund. The proceeds from the contributions by Account Owners to Accounts pursuant to Participation Agreements will be allocated by the Authority to each Investment Option of the

Program in accordance with the Investment Option elections of Account Owners and any applicable allocation guidelines set forth in Section 5(b).

(b) Investment of Program Assets. The Program Assets held in the Program will be invested and administered by the Contractor as set forth in the Program Disclosure Documents and in the registration statements for the Mutual Funds.

(c) Crediting of Contributions. Contributions to the Program by Account Owners received in good order before the close of trading on the New York Stock Exchange (usually 4:00 p.m., Eastern Time) on any Business Day shall be credited to the Account to which the contribution is made on the same day. Contributions received in good order at or after the close of trading on the New York Stock Exchange or on a day other than a Business Day shall be credited on the next Business Day. Contributions shall be credited that same day to the applicable Investment Option at the Net Asset Value per share calculated for that day for such Investment Option. A contribution shall be credited to an Account (i) once the documentation with respect to the Account is properly completed and such contribution is in good order and (ii) at a share price equal to the Net Asset Value per share next calculated for the applicable Investment Option after the contribution is credited.

(d) Distributions. The Contractor shall process requests by Account Owners for distributions from the Accounts in compliance with (i) Section 529 of the Code, (ii) regulations promulgated by the IRS, as amended from time to time, (iii) applicable private letter rulings, (iv) other IRS guidance and (v) the Plan Disclosure Documents. The Net Asset Value per share for an Investment Option applicable to a distribution shall be the Net Asset Value per share next calculated for such Investment Option once such distribution request is received in good order.

**5. PROGRAM INVESTMENT OBJECTIVE; ALLOCATION GUIDELINES; MID-YEAR CHANGES IN ALLOCATION GUIDELINES; INVESTMENT POLICIES AND PERFORMANCE BENCHMARKS.**

(a) Program Investment Objective. In accordance with the Code and the regulations promulgated thereunder, the Contractor shall seek to provide performance consistent with the investment objective of each Mutual Fund or Investment Option. The Contractor shall adhere to all policies, procedures, and criteria as set forth in this Agreement or otherwise by the Authority.

The Authority acknowledges that the Contractor does not guarantee any return of amounts contributed by Account Owners or any income or earnings thereon and that the investment of contributions made by Account Owners under the Program is subject to market risks.

(b) Allocation Guidelines. The Contractor shall invest the Program Assets allocated to a Investment Option or Investment Options (including new contributions allocated to each Investment Option and the net earnings of each Investment Option) in accordance with the ranges determined in accordance with this paragraph and those set forth in Schedule A (the "**Allocation Guidelines**"). All Allocation Guidelines shall be

substantially in the format set forth in Schedule A. On or before June 30 of each calendar year during the Term commencing with June 30, 2008, the Contractor shall submit to the Authority, for the Authority's consideration, the Contractor's recommended Allocation Guidelines for each Investment Option (as described on Schedule A) for the following calendar year. The Contractor shall make such recommendations consistent with the objective of the Program described in paragraph (a) of this Section 5 and the risk levels deemed appropriate by the Authority. At the request of the Authority, the Contractor shall consult with the Authority and may thereafter propose revised Allocation Guidelines for the following calendar year. On or before July 30 of each such calendar year, the Authority shall either notify the Contractor that the Authority approves the Contractor's recommended Allocation Guidelines, as they may have been revised after consultation with the Authority or shall deliver to the Contractor revised Allocation Guidelines that the Authority deems appropriate in the discharge of the Authority's legal obligations.

(c) Mid-Year Changes in Allocation Guidelines. Notwithstanding anything to the contrary set forth above, the Authority, upon written notice to the Contractor, may change the Allocation Guidelines at any time for application during the remaining portion of the calendar year. In the event of any such change by the Authority, the Contractor shall have a commercially reasonable period of time to implement such change in the Allocation Guidelines, including, without limitation, divestitures and acquisitions of securities, taking into consideration relevant market factors and the benefits to Account Owners of minimizing transaction costs.

(d) Investment Policies and Performance Benchmarks. The investment objective, policies and allocation for each of the Investment Options shall be as set forth in Schedule A, as amended from time to time. The Authority reserves the right to adopt additional investment policies applicable to the Program. In the event that such investment policies are adopted, they shall become part of this Agreement as if executed as of the date hereof.

(e) Proxy Voting. The Authority retains the right to vote all proxies of the Mutual Funds and other investments underlying the Investment Options.

(f) Substitution or Addition of Investment Options. The Contractor may recommend to the Authority and effectuate, subject to Authority approval, the substitution or addition of investment options to the Program.

6. MANAGEMENT FEE; COLLECTION; ADJUSTMENTS; NO APPROPRIATION; EXPENSES.

(a) Management Fee. The Contractor will be entitled to the Management Fee as set forth in Exhibit C, subject to adjustments as provided in paragraph (c) of this Section 6, which shall be the Contractor's sole compensation for performing all the Services hereunder. The investment management fee for each Mutual Fund is charged separately and is disclosed in the prospectus for each Mutual Fund and is in addition to the Management Fee payable directly to the Contractor. The Management Fee will accrue and be calculated by the Contractor daily and will be payable to the Contractor monthly. the

Contractor will pay all of its direct and indirect costs and expenses in connection with this Agreement, the Program and the Services (including the Contractor's annual marketing commitment as set forth in Exhibit C, the preparation of all Program disclosure materials, and broker-dealer, investment advisor, transactional and other fees associated with the Mutual Funds), and none of such costs or expenses will be paid from or reimbursed out of assets of the Program (other than the Management Fee).

(b) Payment of the Management Fee; Audit by the Authority. Commencing on the fifteenth day of each month after the Program Start Date, the Contractor will deliver to the Authority a summary report of its calculation of the Management Fee for the preceding month, in a format and by a means, electronically or otherwise, to be agreed upon by the Contractor and the Authority. Such report will set forth, at a minimum, the net assets of the Program invested in each Mutual Fund for each day of the preceding month. If, within seven days following receipt of such calculation, the Authority does not advise the Contractor that it objects to such calculation, the Contractor will withdraw the portion of the Management Fee calculated with respect to the Program Assets from the Program. If the Authority advises the Contractor that it objects to such calculation, the Authority and the Contractor will, in good faith, attempt to resolve such objection as soon as reasonably practicable. If the Authority objects to a portion of such calculation, the Contractor may withdraw such portion of the Management Fee that is not in dispute. The calculation and collection of the Management Fee will remain subject to post-audit adjustment, and neither the Authority's failure to advise the Contractor with respect to any monthly calculation, nor any transfer by the Contractor in payment of a prior amount calculated and submitted but not objected to by the Authority, will preclude subsequent adjustment of the Management Fee or the repayment by the Contractor of any overage to the Program.

(c) Adjustments to the Management Fee Due to Change in Law or Interpretation of Law; Modification or Restructuring of the Program or Modification of Services. The Management Fee may be adjusted only upon mutual written agreement of the parties hereto and only in connection (i) with a mutually agreed upon change in the Program, (ii) if the Program is modified or restructured in response to a change in law, regulation, rule or other administrative act or initiative (or any interpretation thereof by a court or Governmental Authority), and such change materially impacts the duties of the Contractor hereunder (as mutually agreed upon by the Authority and the Contractor) , or (iii) the Services or administrative systems are materially modified.

(d) No Appropriation Required for Management Fee. The Authority represents to the Contractor that payment of the Management Fee is not subject to appropriation by the State.

(e) Administrative Fee. Concurrently with the payment of the Management Fee to the Contractor, the Contractor shall deposit the resultant Administrative Fee into the Administrative Fund. The Administrative Fund shall be in the name of the Authority and shall be invested as deemed appropriate by the Authority. The Authority may, from time to time, direct the Contractor to make transfers from the Administrative Fund of amounts representing Non-Qualified Withdrawal penalties and other fees and income earned thereon

for the payment of the direct and indirect costs and expenses of the Program incidental to the performance of the Authority's duties and obligations in connection with the Program.

7. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CONTRACTOR. The Contractor hereby represents, warrants and covenants to the Authority as of the date hereof as follows:

(a) Organization of the Contractor. The Contractor is a corporation duly organized, validly existing and in good standing under the laws of **[insert name of State]**. The Contractor is also duly qualified and in good standing in the State, and is in compliance with all material governmental approvals, consents, licenses, permits, certificates, franchises and requirements of law that are necessary for the Contractor to conduct its business and to enter into and perform its obligations under this Agreement and the other Program documents. The Contractor has the corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

(b) Authority. The execution and delivery by the Contractor of this Agreement, and the performance by the Contractor of its obligations hereunder, have been duly and validly authorized. This Agreement has been duly and validly executed and delivered by the Contractor and constitutes the legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.

(c) No Conflicts. The execution and delivery by the Contractor of this Agreement and the performance by the Contractor of its duties and obligations hereunder do not: (i) conflict with or result in a breach of any of the terms, conditions or provisions of the articles of incorporation or by-laws of the Contractor; or (ii) conflict with or result in a violation of any term or provision of any law, rule, regulation, judgment, decree, order or injunction applicable to the Contractor or any of its assets and properties or (iii) conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default under, any material agreement to which the Contractor is a party, or any material obligation or responsibility which the Contractor has to any third party.

(d) Approvals and Filings. On the date hereof, [and on the date on which the conditions in Sections 10(a) and (b) have been satisfied,] (i) no consent, approval or action of, or filing with or notice to, any governmental or regulatory authority is required on the part of the Contractor in connection with the execution, delivery and performance of this Agreement or the performance by the Contractor of its obligations hereunder and (ii) no consent or approval of any other Person, including the holders of any indebtedness or obligations of the Contractor, is required on the part of the Contractor in connection with the execution, delivery and performance of this Agreement by the Contractor or the performance by the Contractor of its obligations hereunder.

(e) State Securities and Blue Sky Law Clearance. Subject to (i) verification of the availability of an applicable exemption from securities registration requirements under the securities laws of the State and (ii) the making of necessary notice filings (which filings the Contractor will make prior to the Program Start Date), Accounts may be promoted and offered to, opened by, and contributions thereto made by, prospective or actual Account Owners eligible to open an Account pursuant to the Code in each state of the United States.

The Contractor will be solely responsible for identifying all required consents, approvals, notifications and other filings to this end under applicable state securities or blue sky laws and for the qualification of the Accounts under the securities laws of the State and of each state of the United States, if required. The Authority will cooperate with the Contractor, as may be necessary, in the Contractor's preparation and submission of all such consents, approvals, notifications and other filings.

(f) Mutual Fund Registration. The Mutual Funds are registered as an investment company under the Investment Company Act of 1940, as amended.

(g) Licenses and Approvals. The Contractor shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.

(h) Registration. The Contractor is (A) registered or exempt from registration under the Investment Advisors Act of 1940, as amended; and (B) registered or licensed by the U.S. Securities and Exchange Commission ("**SEC**"), any self-regulatory organization (as such term is defined in §3(a) (26) of the Securities Exchange Act of 1934, as amended), any regulatory agency of any state of the United States, or any U.S. Government department or agency, as applicable.

(i) 1940 Act. If the Program shall be required to register as an investment company under the Investment Company Act of 1940, as amended, then the Contractor will cooperate with the Authority in effecting such registration in a timely manner.

(j) Compliance with Laws. The offer and sale of interests in the Trust and performance of the Services shall be performed in compliance with all requirements of the SEC, the National Association of Securities Dealers, the Municipal Securities Rulemaking Authority and any other state or federal authority to the extent such requirements may be or become applicable to the Contractor or any of its subcontractors.

(k) No Litigation. There is no action, suit, investigation or proceeding pending or, to the best knowledge of the Contractor, threatened against the Contractor before any court, arbitrator or administrative or governmental body which might result in a Material Adverse Effect on the operations of the Contractor or which might materially and adversely affect the ability of the Contractor to perform the Services hereunder.

(l) Continuing Representations, Warranties and Covenants. Each of the representations, warranties and covenants made by the Contractor in this Agreement is true and correct (A) as of the date hereof, (B) on and as of the Program Start Date and (C) through the final day of the Term.

8. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE AUTHORITY. The Authority hereby represents, warrants and covenants to the Contractor as of the date hereof that:

(a) The Authority is an agency of the State; the execution and delivery of this Agreement by the Authority, and the performance by the Authority of its obligations

hereunder, have been duly and validly authorized under Applicable Law; the Authority has the legal right, power and authority to execute and deliver this Agreement, and the Authority has the legal right, power and authority to perform its obligations hereunder; and this Agreement has been duly and validly executed and delivered by the Authority and constitutes the legal, valid and binding obligation of the Authority, enforceable against it in accordance with its terms.

(b) The execution and delivery of this Agreement by the Authority, the performance by the Authority of its obligations hereunder and the consummation of the transactions contemplated hereby do not: (a) conflict with or result in a violation of any term or provision of any law, rule, regulation, judgment, decree or injunction applicable to the Authority or the Program, or (b) conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default under, any agreement or other instrument to which the Authority or the Program is a party, or any material obligation of the Authority or the Program to a third party.

(c) No additional consents, approvals or actions of, or filing with or notice to, any agency or instrumentality of the State is required in connection with the execution and delivery of this Agreement by the Authority and the performance of this Agreement by the Authority or the consummation by the Authority of the transactions contemplated hereby, except such consents and approvals that will have been obtained upon execution and delivery of this Agreement.

(d) The Authority is in full compliance with all of the provisions of the Code and all other Applicable Law.

(e) Except as provided in Section 10, no consent, approval or further action by a Governmental Authority is required to cause proceeds from the contributions by Account Owners to be invested in the Mutual Funds and the Funding Agreement.

(f) The Program Assets shall only be used as authorized under the Code and Section 529 and the rules and regulations promulgated thereunder. The Program Assets shall not be subject to appropriation by the State or any subdivision thereof. The Program Assets shall not be subject to claims by creditors of the State.

#### 9. COOPERATION; IRS LETTER RULING; EXPENSES.

(a) Cooperation. The parties will cooperate with each other in a commercially reasonable manner in order that the conditions to the obligations of the Authority and the Contractor contained in Section 10 are satisfied and the duties and obligations of the parties hereunder may be effectively, efficiently and promptly discharged.

(b) IRS Letter Ruling; SEC No-Action Letter. The Authority may seek such legal advice concerning the status of the Program and the Trust as it deems advisable, including (i) preparing and filing on behalf of the Trust, a private letter ruling from the IRS to the effect that the Program satisfies the qualification requirements of Section 529 and is exempt from federal taxation and addressing other issues agreed upon by the Contractor and the Authority (the “**IRS Letter Ruling**”) and (ii) preparing and filing on behalf of the Trust

a no-action letter from the SEC staff to the effect that the Trust and the operation of the Trust will be exempt from the registration requirements of the Securities Act of 1933, as amended and the rules and regulations thereunder and exempt from the broker-dealer registration requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (“SEC No-Action Letter”). At not time during the Term shall the Contractor seek and IRS Letter Ruling, SEC No-Action Letter or any other interpretation of Applicable Law by any Governmental Authority specifically relating to the Trust or the Program independent of the efforts of the Authority to obtain such interpretations and without the express written consent of the Authority, which consent shall not be unreasonably withheld to the extent consistent with the Program and the Trust.

(c) Actions; Expenses. The Authority and the Contractor, except as otherwise consented to or approved by the other parties in writing or as expressly permitted or required by this Agreement, will take all commercially reasonable actions to obtain the IRS Letter Ruling and/or SEC No-Action Letter, and thereafter to meet their responsibilities hereunder with a view to the continuing applicability of the IRS Letter Ruling and/or SEC No-Action letter. The Contractor will pay the fees and disbursements of its counsel in connection with the preparation of the requests for and efforts to obtain the IRS Letter Ruling and/or SEC No-Action Letter, as applicable.

(d) Further Cooperation. In the event that the Program or objectives of the Program are adversely affected due to interpretations of existing federal tax law (including, without limitation, if the IRS Letter Ruling or SEC No-Action Letter negatively impacts the Program or the IRS refuses to issue the IRS Letter Ruling or the SEC refuses to issue the SEC No-Action Letter), State tax law or federal or State securities laws, (i) the Authority and the Contractor will use commercially reasonable efforts to restructure the Program within the constraints of applicable law to address such adverse consequences, and (ii) the Authority and the Contractor each will pay its own expenses in connection with such efforts through the date of such restructuring.

10. CONDITIONS TO THE PROGRAM START DATE. On or before the Program Start Date, each of the following conditions must be satisfied or waived by the Contractor and the Authority:

(a) Tax Opinion. The Contractor shall have obtained, at its sole expense, an opinion for the benefit of the Authority and the Contractor from counsel to the Contractor, that the Program satisfies the qualification requirements of Section 529 and any other matters agreed upon will have been obtained, which opinion will be in form and substance reasonably satisfactory to the Authority and the Contractor.

(b) State Tax Opinion. The Contractor shall have obtained, if necessary, at its sole expense, an opinion that the Program, the Account Owners and the Beneficiaries will qualify for the State tax benefits and deferrals contemplated by the applicable provisions of the Code and any other applicable state law.

(c) Representations and Warranties. Each of the representations and warranties made by the Authority and the Contractor, respectively, in this Agreement will be true and correct in all material respects on and as of the Program Start Date (it being agreed



and understood that each party may waive the effect of any misrepresentation by the other party).

(d) Participation Agreement and Program Disclosure Documents.

(i) Completion. The Participation Agreement and the Program Disclosure Documents will be in form and substance acceptable to the Authority and the Contractor.

(ii) Certificate of the Authority. The Authority will have delivered to the Contractor a Certificate, dated the Program Start Date, to the effect that (A) all portions of the Program Disclosure Documents describing the Authority, its duties and responsibilities with respect to the Program and the Code are complete and accurate in all material respects and (B) the Program Disclosure Documents completely and accurately describes the Program and the Authority and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, except that the Authority will not express therein any position as to the sufficiency, accuracy or completeness of any disclosure in, or omissions from the Program Disclosure Documents relating to: (1) the design of the investment structure of the Program; (2) the Investment Options and the Allocation Guidelines structure and the rationale therefor; (3) the implementation by the Contractor of the investment strategy; (4) the manner of Net Asset Value per share determinations and valuation of investments; (5) reporting to the IRS and the State Tax Department; (6) references to communications between the Contractor and Account Owners; (7) any projections contained in the Program Disclosure Documents; (8) the description of the Mutual Funds, including investment policies relating thereto; (9) how transfers in investments will be made in response to changes in the Allocation Guidelines; or (10) items referred to in clause (iii) (A) of this Section 10(d).

(iii) Certificate of the Contractor. the Contractor will have delivered to the Authority a Certificate, dated the Program Start Date, executed on behalf of the Contractor, to the effect that (A) all portions of the Program Disclosure Documents describing the Contractor, its affiliates and its delegates, and its and their duties and responsibilities with respect to the Program, are complete and accurate in all material respects and (B) to the best of the Contractor's knowledge, the Program Disclosure Documents completely and accurately describes the Program, the Authority, the Investment Options and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except that the Contractor will not express therein any position as to the sufficiency, accuracy or completeness of any disclosure in, or omissions from, the Program Disclosure Documents relating to (1) changes in the Allocation Guidelines directed by the Authority modifying the Allocation Guidelines recommended by the Contractor) and mid-year changes in the Allocation Guidelines directed by the Authority described in Section 5(c); (2) withdrawals by the Authority from the Administrative Fund; (3) selection by the Authority of a successor to the Contractor as the provider of the Services; and (4) items referred to in clause (ii)(A) of this Section 10(d).

(e) Opinion of Contractor's Counsel. An opinion of counsel shall have been provided to the Contractor, addressing the matters to which the Contractor has delivered its representations, warranties and covenants as set forth in Section 7.

11. REPORTS AND FINANCIAL STATEMENTS; ACCOUNT STATEMENTS; ELECTRONIC DATA SUBMISSION; AUDITS.

(a) Reports and Financial Statements. the Contractor will prepare and deliver to the Authority (i) within twenty (20) Business Days immediately following the end of each calendar quarter, reports on the performance of each of the Mutual Funds and the Administrative Fund, in a form mutually satisfactory to the Authority and the Contractor, and (ii) within forty (40) days immediately following the end of each fiscal year of the Authority, an annual statement of assets and liabilities and changes in net assets in a form mutually satisfactory to the Authority and the Contractor, each such report to be prepared in accordance with generally accepted accounting principles applied on a consistent basis as of and for the periods involved.

(b) Account Statements. the Contractor will prepare and deliver to each Account Owner within thirty (30) days immediately following the end of the period to which they pertain, calendar quarter and calendar year statements (i) identifying the contributions made to each selected Investment Option in the relevant Account during the preceding period, (ii) the total contributions made to each selected Investment Option in such Account through the end of such period, (iii) the total value of such Account(s) at the end of such period, (iv) distributions made from each selected Investment Option in such Account during such period and (v) such other information that the Contractor and the Authority agree to have reported to the Account Owner.

(c) Compliance Requirements. The Contractor shall:

(i) Keep the Program in compliance with requirements of the Code and the regulations and rules of the Program promulgated thereunder and any amendments thereto, provided such amendments do not impair a material term of this Agreement, and to manage the Program to qualify as a "qualified state tuition program" under Section 529, as amended, along with any regulations thereunder, including the proposed regulations issued by the IRS as of the date hereof and such regulations when published as final; provided, however, that (A) compliance with any modifications to or interpretations of current or future regulations and/or rules relating to the Program can be achieved by the Contractor in a commercially reasonable manner and (B) the Authority fully cooperates in effectuating such compliance;

(ii) Keep adequate records of each Account, keep each Account separate from each other Account and provide the Authority with the information necessary to prepare the Account information and statements required by the Statute;

(iii) Compile information for statements required to be prepared under the Code and provide such compilations to the Authority; and

(iv) Provide the Authority with copies of all regulatory filings and reports made by the Contractor in connection with the Program until the Final Termination Date of this Agreement.

(d) Tax Reports. The Contractor shall:

(i) If there is any distribution from an Account to any individual or for the benefit of any individual during a calendar year, report such distribution to the Internal Revenue Service and either the Account Owner, the Beneficiary or the distributee to the extent required by federal law or regulation; and

(ii) Prepare and file statements and information relating to Accounts to the extent required by federal and State tax law.

(e) Audits. The Contractor shall prepare, at its expense, annual financial statements in accordance with generally accepted accounting principles for the Program within seventy-five (75) days following the end of each calendar year. Upon request, the Contractor shall provide such books, records, documents and accounting procedures and practices within its custody and control as are relevant to the performance of the Services for examination by the Authority and its outside auditors for a period of up to six years from the expiration of the Term or termination of this Agreement, whichever is earlier.

## 12. OWNERSHIP AND CUSTODY OF PROGRAM RECORDS.

The Authority shall own and have all right, title and interest in and to, and beneficial ownership of, the Program Records, which shall be readily accessible to the Authority, at the Contractor's expense, in a commercially reasonable manner. In performing the Services, and in the event of any action, suit, investigation or similar proceeding involving the Contractor that is brought in connection with the Program, the Contractor and its subcontractors will have full access to the relevant Program Records and to the fullest extent permitted by law, the Authority will cooperate fully, and will cause its officers and employees to cooperate fully, with the Contractor in connection with any such action, suit, investigation or similar proceeding.

## 13. CONFIDENTIALITY.

(a) The Contractor and the Authority agree to maintain all personal and financial information concerning the Account Owners and Beneficiaries related to the Program (except for disclosures to Account Owners of such information relating to them or their Accounts, disclosures required by Section 12(d) of this Agreement, and disclosures of information regarding Qualified Withdrawals to institutions of higher education) unless written authorization to disclose such information has been given by the appropriate party. In addition, the Authority may disclose technical, financial, business or other information which is confidential under Applicable Law or identified by the Authority as confidential. The personal, technical, financial business and other information referred to above is referred to as "**Confidential Information.**"

The Contractor will use Confidential Information solely for the purpose of performing the Services in accordance with this Agreement. The Contractor will hold all

such information and all information generated in the performance of the Services in strict confidence indefinitely (even beyond the term and termination of this Agreement) and will not disclose such information without prior written authorization from the Authority. The Contractor will defend, indemnify and hold the Authority, the Program and the Trust harmless against and from all claims, damages, injuries, costs, expenses and losses arising out of the wrongful use or disclosure of such information by the Contractor or its current or former employees.

(b) This Section 13 will not restrict any disclosure required to be made by Applicable Law, except that no such disclosure will be made sooner (unless otherwise compelled) than five (5) Business Days immediately following the other party's receipt of written notice of such requirement, and such notice will include a copy of any Applicable Law. In the event either party is ordered to disclose Confidential Information, such party will afford to the other party a reasonable opportunity to participate and object, at the other party's expense, to any such disclosure.

(c) Public Records. Pursuant to IC §5-14-3-3, information or documents received by the Authority from the Contractor may be open to public inspection and copying unless exempt from disclosure. Contractor shall clearly designate individual documents as "exempt" and shall indicate the basis for such exemption and Contractor agrees to indemnify and defend the Authority for honoring such a designation. The failure to designate any document that is released by the Authority shall constitute a complete waiver of any and all claims for damages caused by any such release.

(d) Use by Employees and Agents. The requirement of confidentiality under this Agreement also applies to the subcontractors and delegates of any party and employees, attorneys and other professional advisers and agents of the parties hereto and such subcontractors and delegates. Each party hereto will use its best efforts to ensure that such persons adhere to the confidentiality requirements set forth herein. Use and disclosure of proprietary and Confidential Information by employees, agents, attorneys and other professional advisers to the extent necessary to carry out the terms and purposes of this Agreement is permitted.

#### 14. COMMUNICATIONS; THE CONTRACTOR AND AFFILIATE MARKETING AND ADVERTISING; MARKETING PROGRAM; MEDIA MATERIALS.

(a) Communications. The Contractor will be identified as the program manager for the Program, and the Contractor brand name and logo, together with the Program Logo, will be displayed, on (i) each application to open an Account and each Participation Agreement; (ii) the Program Disclosure Documents and any disclosure supplemental thereto; (iii) each Program Account statement; (iv) each pamphlet and other materials advertising the Program; (v) each advertising of the Program in print and electronic media; and (vi) other Program documents, including other Program forms and letterhead. The Program Logo shall at all times be represented with equal or greater prominence than the Contractor brand name and logo. All communications shall be made in accordance with all Applicable Laws, including the rules and regulations, as may be in effect from time to time

of the Municipal Securities Rulemaking Authority and the National Association of Securities Dealers.

(b) The Contractor and Affiliate Marketing and Advertising. Only if an Account Owner indicates on a Participation Agreement that such Account Owner wishes to receive additional solicitations from the Contractor, shall the Contractor and its affiliates, but only under separate cover from any communication to Account Owners relating to the Program or an Account, make directed non-Program mailings to such Account Owners of (i) brochures, pamphlets and other advertising or marketing information concerning the Contractor or its subsidiaries and affiliates or the products or services thereof and (ii) with the prior written consent of the Authority, which consent will not be unreasonably withheld, other mailings; provided that without the prior written consent of the Authority no mention in any non-Program mailing will be made of the Program, including any aspect thereof. The Contractor will not, and will cause its affiliates not to, (i) sell any list established in administering the Program of Account Owners or Beneficiaries or any name thereon to any third party, (ii) use any list of Account Owners or any name therein for a solicitation for any other tuition funding programs, (iii) solicit any Beneficiaries or (iv) solicit any Account Owners who have requested in their Participation Agreement that they not receive solicitations from the Contractor or its affiliates. The Contractor will be permitted to advertise to the general public or any third parties unrelated to the Program, the Contractor's status as program manager of the Program. The internet web site for the Program will contain the address of the web site of the Contractor, which currently has the URL address [http://www.\\_\\_\\_\\_\\_](http://www._____).

(c) Marketing Expenditures and Promotional Activities. The marketing and promotional activities performed by the Contractor for the Program shall include, but not be limited to, the Services set forth in Schedule C. Within thirty (30) days of the execution of this Agreement (for the current calendar year) and by not later than November 15 of each calendar year thereafter (commencing with the calendar year 2008), the Contractor will submit, in writing, a proposed marketing program for the immediately following calendar year. Prior to implementation, each marketing program must be satisfactory to the Authority. The Contractor will implement the marketing program, as approved in writing by the Authority, and any material changes to such program will require the prior written consent of the Authority. The Authority will notify the Contractor in advance of all marketing and promotional activities of the Authority with respect to the Program and shall obtain the Contractor's permission prior to using the Contractor's name or the Contractor's brand name and logo on any communication about the Program.

15. LIABILITY OF THE CONTRACTOR; INDEMNIFICATION BY THE CONTRACTOR; LIABILITY OF THE AUTHORITY AND ITS REPRESENTATIVES.

(a) (i) Liability of the Contractor. The Contractor, to the fullest extent permitted under Applicable Law, will be liable to the Authority for any and all Losses suffered, incurred or sustained by the Authority or its employees, agents, representatives, affiliates, delegates or subcontractors, or to which the Authority, its employees, agents, representatives, affiliates, delegates or subcontractors, becomes subject, to the extent resulting from, arising out of or relating to a breach by the Contractor of its duties, obligations, representations, warranties or covenants under this Agreement, as a result of any negligent act or omission, willful misconduct, a material breach of this Agreement or fraud by the Contractor or its officers, employees, agents, representatives, delegates or subcontractors.

(ii) Indemnification by the Contractor. The Contractor will, to the full extent permitted under Applicable Law, indemnify, defend and hold harmless the Program, the Authority and the members, officers, employees and agents of any of them having responsibilities in connection with the Program and any successors of any of them (collectively, the “**Program Indemnitees**”), from and against any and all Losses suffered, incurred or sustained by the Program Indemnitees or to which any of them becomes subject, to the extent resulting from, arising out of or relating to a breach of this Agreement and constituting a negligent act or omission, willful misconduct or fraud by the Contractor or its officers, employees, agents, representatives, affiliates, delegates or subcontractors with respect to, related to or concerning this Agreement. Notwithstanding the foregoing, a Program Indemnitee will not be entitled to indemnification hereunder if it has been adjudicated that (i) any Program Indemnitee (including any Program Indemnitee not seeking indemnification) acted in bad faith and, in the case of a criminal proceeding, had reasonable cause to believe that its, his or her conduct was unlawful or (ii) such Losses arose from a material violation of this Agreement by, or the negligent act or omission, willful misconduct or fraud of, or willful violation of law by, any Program Indemnitee (including any Program Indemnitee not seeking indemnification).

(b) Indemnification Procedures. If there is asserted any claim, liability or obligation that in the judgment of a party indemnified above (“**Indemnified Party**”) may give rise to any Losses, or if such Indemnified Party determines the existence of the foregoing whether or not the same shall have been asserted, such Indemnified Party shall give notice to the Contractor (including reasonable detail of the facts giving rise to same) upon receipt of notice of the assertion of any claim, liability or obligation, or receipt of notice of the filing of any lawsuit based upon such assertion, or, with respect to a claim not yet asserted against the Indemnified Party, promptly upon the determination by the Indemnified Party of the existence of the same. No Indemnified Party or Parties shall compromise or settle any claim or dispute to which this Section applies without the written consent of the Contractor. Such written consent will not be unreasonably withheld.

(c) Liability of the Authority. The liability of the Authority under this Agreement is limited to the extent contemplated and provided by the Indiana Tort Claims Act (IC §34-13-3).

(d) No Personal Liability. In no event shall any official, officer, employee or agent of the state of Indiana or the Authority be personally liable or responsible for any

representation, statement, covenant, or obligation contained in, or made in conjunction with, this Agreement, whether express or implied.

16. TERMINATION OF AGREEMENT.

(a) Termination. This Agreement will terminate prior to the expiration of the Term, upon the occurrence of any of the following (each an “**Early Termination Event**”):

(i) at the Authority’s election, if the Contractor breaches any provision of this Agreement (with respect to representations, covenants or otherwise) and such breach remains uncured for more than ninety (90) days with respect to a breach involving the Contractor’s computer systems or more than thirty (30) days with respect to all other breaches, in each case after the Authority has given written notice thereof to the Contractor, and such breach has a Material Adverse Effect; or

(ii) at the Authority’s election, if the Contractor commences a voluntary case or other proceeding seeking rehabilitation, liquidation, reorganization or other relief with respect to itself or its debts under any rehabilitation, bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, rehabilitator, receiver, liquidator, custodian or other similar official of it or substantially all of its property, or will consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or will make a general assignment for the benefit of creditors, or file an answer admitting the material allegations of a petition filed against it in any such proceeding or fail generally to pay its debts as they become due, or will take any corporate action to authorize any of the foregoing; or

(iii) at the Authority’s election, if an involuntary case or other proceeding will be commenced against the Contractor seeking rehabilitation, liquidation, reorganization or other relief with respect to it or its debts under any rehabilitation, bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding will remain undismissed and unstayed for a period of sixty (60) days; or

(iv) at the Authority’s election in the event of a change in law which has a Material Adverse Effect on the ability of the State to operate the Program; or

(v) at the Authority’s election in the event the Authority determines that termination of the Agreement is in the best interest of the State;

(vi) at the Authority’s election in the event the Indiana legislature repeals and does not replace the Statute; or

(vii) Notwithstanding any other provision of this Agreement, the Authority may, at any time at its sole discretion, terminate this Agreement, in whole or in part, upon sixty (60) days notice to the Contractor, or at such later date as the Authority may establish in such notice.

(b) Existing Accounts. In the event this Agreement is not renewed at the expiration of the Term or any additional term, the Contractor shall continue to accept contributions from Account Owners existing as of the Agreement termination date and shall continue to maintain Account records and Account balances, for such Accounts, in accordance with the terms of this Agreement. The Contractor shall not solicit or accept new Accounts after the expiration of the Term and any additional terms of the Agreement.

(c) Transition Accounts.

(i) In the event this Agreement is terminated by an Early Termination Event provided for in Paragraph 17(a), the Contractor shall cease soliciting and accepting new Accounts and contributions. The Contractor shall do everything in its power to facilitate the transfer of the Accounts and the Services from the Contractor to any workforce, agency, contractor, or other entity designated by the Authority. The Contractor, its employees, agents and subcontractors shall provide the Authority, its staff and whoever the Authority selects to perform future work for the Program, complete, immediate and unimpeded access to all records, data, files and information pertinent to performing the work which the Contractor will be ceasing to perform. The Contractor shall continue to perform all work under this Agreement during a transition of up to one year as determined by the Authority to ensure an orderly transition of services provided pursuant to a new agreement. The Contractor and the Authority must mutually agree upon any longer transition period.

(ii) The Contractor shall take all steps necessary to ensure that all system materials, including documentation, are current and adequate to facilitate the orderly transfer of all files, data, information and assets of or relating to the Program in a reasonable and storable electronic form within a medium mutually agreed upon by the Contractor and the Authority.

(iii) When work is transferred from the Contract, the Contractor shall take all steps necessary to ensure that its employees, agents and subcontractors do not impede or delay the orderly transfer of work. In the event of a transfer of work from the Contractor, if there is any delay in the transfer which is the direct or indirect result of actions of the Contractor, its employees, agents or subcontractors which impedes the transfer of work, the Authority may, at its discretion, require the Contractor to pay to escrow fees otherwise allowable under the terms of this Agreement until such time as the transition is complete.

(iv) Collection by the Authority of the amount authorized in this provision does not limit the Authority's ability to collect any other amounts that the Authority is authorized to pursue and collect pursuant to other provisions of the Agreement or Applicable Law.

17. NOTICES. Any notice given in connection with this Agreement shall be given in writing and shall be delivered either by hand to the other party; by courier; by certified mail, postage prepaid, return receipt requested, to the other party at the other party's address provided below; or by facsimile transmission or e-mail transmission to the other party as noted below. Notice shall be deemed delivered immediately upon personal service and upon confirmation of transmission if sent by facsimile transmission. Notice provided in the United States mail shall be deemed delivered the third Business Day after



the document has been deposited in the United States mail. Notice by e-mail transmission shall be deemed delivered on the date the recipient provides written acknowledgement (via email or other method) of receipt of the same. Either party may change its physical address, facsimile number or email address by giving written notice of the change to the other party.

If to the Authority to:

Indiana Education Savings Authority  
One North Capital Avenue, Suite 444  
Indianapolis, Indiana 46204  
Attention: Jodi Golden  
Telephone: (317) 232-5259  
Facsimile: (317) \_\_\_\_\_  
Email: [Jgolden@tos.in.gov](mailto:Jgolden@tos.in.gov)

If to the Contractor to:

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

18. WAIVER. The terms and conditions hereof may be waived only by a written instrument signed by the party waiving compliance. The failure of the Authority or the Contractor to insist on strict compliance with this Agreement, or to exercise any right or remedy under this Agreement, will not constitute a waiver of any rights provided under this Agreement, nor estop either party from thereafter demanding full and complete compliance nor prevent either party from exercising such a right or remedy in the future. Any waiver by either party of any right under this Agreement will not constitute a waiver with respect to any separate or subsequent right or matter under this Agreement.

19. FORCE MAJEURE. Neither the Authority nor the Contractor (or the Contractor's affiliates, subcontractors or delegates) shall be liable for or deemed to be in default for any delay or failure to perform under this Agreement if such delay or failure to perform results from an act of God, civil or military authority, act of war, riot, insurrection or other occurrence beyond that party's control. In such case, the intervening cause must not be caused by the party asserting it and the excused party is obligated to promptly perform in accordance with the terms of this Agreement after the intervening cause ceases.

20. NO THIRD-PARTY BENEFICIARIES. Except as otherwise specifically provided for herein, nothing in this Agreement is intended or will be construed to give any person, other than the parties hereto, their successors and permitted assigns, any legal or

equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

21. NO PARTNERSHIP; INDEPENDENT CONTRACTOR. Nothing contained in this Agreement will be deemed or construed to create the relationship of a joint venture or partnership between the Contractor and the Authority. the Contractor will have no authority to bind the Authority without the written consent of the Authority. the Contractor is an independent contractor and will be free, subject to the terms and conditions of this Agreement, to exercise judgment and discretion with regard to the conduct of its business, including, without limitation, performing management, investment advisory and other services for qualified state tuition savings and prepaid tuition programs other than the Program and for other clients.

22. HEADINGS. Headings and subheadings of provisions of this Agreement are solely for the convenience of reference and are not a part of this Agreement and will not affect the meaning, construction, operation or effect hereof.

23. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter hereof and incorporates, merges and supersedes any and all prior understandings and communications, whether written or oral, with respect to such subject matter.

24. GOVERNING LAW AND SEVERABILITY. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana. The venue of any action to enforce the provisions of this Agreement shall be Marion County, Indiana. In the event any term of this Agreement is held to be invalid or unenforceable by a court, the remaining terms of this Agreement will remain in force.

25. SURVIVAL. Sections 1, 6, 12, 13, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27 will survive the Final Termination Date.

26. AMENDMENT. This Agreement, including the Annexes hereto, may be amended only if such amendment is in writing and agreed to by the Authority and the Contractor.

27. ATTORNEY'S FEES. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

28. TIME OF ESSENCE. Time is expressly declared to be of the essence of this Agreement.

29. COUNTERPARTS. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered will be an original, but all of which taken together will constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective representatives duly authorized so to do on the date and year first above written.

**INDIANA EDUCATION SAVINGS AUTHORITY**

By:  
Name:  
Title:

**CONTRACTOR**

By:  
Name:  
Title:

**SCHEDULE A**  
**FINANCIAL SERVICES**  
**[TO BE COMPLETED FOLLOWING AWARD OF CONTRACT]**

**SCHEDULE B**

**ACCOUNT ADMINISTRATION**

**[TO BE COMPLETED FOLLOWING AWARD OF CONTRACT]**

**SCHEDULE C**

**MARKETING**

**[TO BE COMPLETED FOLLOWING AWARD OF CONTRACT]**

**SCHEDULE D**

**CUSTOMER SERVICE**

**[TO BE COMPLETED FOLLOWING AWARD OF CONTRACT]**

**SCHEDULE E**  
**TRANSITION PLAN**  
**[TO BE COMPLETED FOLLOWING AWARD OF CONTRACT]**



## **ATTACHMENT C – PRICING SCHEDULE**

### **Costs and Fees**

The Authority has set a goal to not exceed an average expense ratio, as compensation under the Agreement, of less than 90 bp for participants who do not choose to use a broker/dealer. The Authority expects the successful Provider to fund its investment management, account administration, customer service and certain marketing expenses through its portion of the investment option's expense ratio. In addition, the Provider may not charge a fee of any type to account owners, nor will there be any cost to the Authority, for the transfer of existing accounts to the Provider or any of the investment options proposed by the Provider.

As with most Section 529 savings plans, the up front costs to the successful Provider are recovered with fees charged to the portfolios as a whole. With that in mind, the Authority is asking for this Pricing Schedule to be completed based on each of the following:

- (i) an Agreement with a term of five years (with the possibility of two renewal terms of one year each at the sole option of the Authority), commencing upon completion and execution of the Agreement, and
- (ii) an Agreement with a term of seven years (with the possibility of two renewal terms of one year each at the sole option of the Authority), commencing upon completion and execution of the Agreement.

All information should be submitted in the same Financial Proposal, with charts and schedules modified accordingly.

Please complete this pricing schedule and include all fees that the Provider proposes to charge to manage the Program in this Attachment. Failure to complete this Attachment C can result in elimination from further consideration.

## 1. Definitions

**Weighted average operating expense ratio** – weighted average operating expense ratio of the mutual funds underlying each investment option.

**Program Management Fee** – the fee to be assessed by the Provider to Account Owners in addition to the weighted average expense ratio.

**Administrative Fee** – the fee to be paid by the Provider to the Authority in consideration for administrative and marketing expenses incurred by the Authority in administering the Program.

**Fiscal Year End** – June 30.

## 2. DIRECT SOLD PLAN

### Weighted Average Operating Expense Ratio Tables

**Age-Based Investment Options** – Please complete the following for each proposed Age-Based investment option, modifying the table as necessary.

	Specify year of enrollment or Age of Child	Weighted Average Operating Expense Ratio <sup>1</sup>
Age-Based Investment Option #1		
Age-Based Investment Option #2		
Age-Based Investment Option #3		
Age-Based Investment Option #4		
Age-Based Investment Option #5		
Age-Based Investment Option #6		
Age-Based Investment Option #7		
Age-Based Investment Option #8		

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<sup>1</sup> The Weighted Average Operating Expense Ratio should be expressed in basis points.

**Fixed Investment Options** - Please complete the following for each proposed fixed investment option, modifying the table as necessary.

	<b>Specify Asset Allocation</b>	<b>Weighted Average Operating Expense Ratio<sup>1</sup></b>
Fixed Investment Option #1		
Fixed Investment Option #2		
Fixed Investment Option #3		
Fixed Investment Option #4		
Fixed Investment Option #5		
Fixed Investment Option #6		
Fixed Investment Option #7		
Fixed Investment Option #8		

The weighted average operating expense ratios for all portfolios in the Program will not exceed \_\_\_\_\_.

**Underlying Mutual Funds.** Each fixed Investment Option currently offered under the Program is comprised of a single mutual fund. The current portfolios are the Bond, Equity Index, Inflation-Protected, International, Large Cap Growth, Large Cap Value, Small Cap and Tuition Portfolios. The Tuition Portfolio is the same Tuition Portfolio offered as an Age-Based Option.

The following table sets forth the target asset allocation for each of the Age-Based Investment Options currently offered under the Program.

Asset Class	Growth Portfolio	Growth & Income Portfolio	Balanced Portfolio	Conservative Growth Portfolio	Tuition Portfolio
Large Cap Domestic Equity					
Large Cap Core (passive)	15%	12%	8%	6%	0%
Large Cap Value	16%	12%	9%	5%	0%
Large Cap Growth	16%	12%	9%	5%	0%
Small Cap Domestic Equity					
Small Cap Core	18%	14%	10%	6%	0%
International Equity					
Core International Equity	25%	20%	14%	8%	0%
Domestic Fixed Income					
Core Fixed Income	10%	30%	50%	70%	0%
Cash Equivalents					
Money Market	0%	0%	0%	0%	100%
<b>TOTAL</b>	100%	100%	100%	100%	100%

Please describe the specific mutual funds or other investments the Provider would propose if the Authority were to determine that it desires to retain each of the portfolios listed above with the same target asset allocations.

Please complete the following table for the mutual funds or other investments proposed. Additionally, please include the amount of revenue sharing for each proposed fund. Performance information should be provided for the cumulative periods ended June 30, 2007.

Option	Fund Name	Investment Portfolio	Ticker	Expense Ratio	Annualized Performance (%)		
					3 Yrs	5 Yrs	10 Yrs
Cash							
Domestic Fixed Income							
Inflation-Protected Fixed Income							
Large Cap Passive							
Large Cap Value							
Large Cap Growth							
Small Cap Core Equity							
International Core Equity							

## Projected Costs and Expenses for the Initial Term of the Agreement

Please complete the following chart for projected costs and expenses in the following categories<sup>2</sup>:

### Summary Of Program Management Fee And Expenses to be paid by Account Owners to the Provider

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
<b>Proposed Program Management Fee</b>	On fiscal year-end assets to: \$_____M _____%	On fiscal year-end assets to: \$_____M _____%	On fiscal year-end assets to: \$_____M _____%	On fiscal year-end assets to: \$_____M _____%	On fiscal year-end assets to: \$_____M _____%	On fiscal year-end assets to: \$_____M _____%	On fiscal year-end assets to: \$_____M _____%
<u>Expenses*</u>	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
<b>Administrative Costs</b>	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
Investment Management Costs	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
Marketing Costs	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
Customer Service Costs	<u>\$_____</u>	<u>\$_____</u>	<u>\$_____</u>	<u>\$_____</u>	<u>\$_____</u>	<u>\$_____</u>	<u>\$_____</u>
Other Costs (specify)							
<b>TOTAL EXPENSES</b>							

<sup>2</sup> If there is no charge for any of the services listed, please note with an "n/c".

### 3. ADVISOR SOLD PLAN

Please complete the following fee chart for the Provider's proposed share class structure. A basis point presentation is preferred. If the Provider is not proposing similar share classes, then indicate which items are not applicable and describe the share classes or fee structure to be offered.

Share Class	Investment Fees	Upfront Sales Load	CDSC	Trail	Program Management Fee	Total Fees
A						
B						
C						
Other (please specify)						

Describe all relevant aspects of each share class, including (i) the point at which a share class converts to A shares, (ii) all information relevant to any applicable contingent deferred sales charges (CDSC), (iii) whether the sales charges proposed would be different for in-State versus out-of-State residents, (iv) any fee sharing or other arrangements with distributors, investment managers, subcontractors or other service providers, and (v) any additional expenses or fees associated with the Provider's proposal (these fees may be included under 4. below, as applicable).

Please complete the following table, modifying as necessary. Selling commission information should be based on the amount contributed. On-going sales fees should be based on the average daily net assets in each Account and indicate when payment begins.

	Selling Commission	On-Going Sales Fee
A Shares		
Amount Contributed		
Less than \$50,000		
\$50,000 – \$99,999		
\$100,000 - \$249,999		
\$250,000 and above		
B Shares		
C Shares		
Other Classes (please specify)		



#### 4. GENERAL

Please complete the following table with regard to all Administrative Fees proposed to be paid to the Authority.

##### Summary Of Administrative Fee To Be Paid By Provider To The Authority<sup>3</sup>

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
<b>On fiscal year-end assets of:</b>	\$_____M	\$_____M	\$_____M	\$_____M	\$_____M	\$_____M	\$_____M
<b>Proposed Administrative Fee</b>	_____%	_____%	_____%	_____%	_____%	_____%	_____%
	and/or	and/or	and/or	and/or	and/or	and/or	and/or
	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
	Check one:	Check one:	Check one:	Check one:	Check one:	Check one:	Check one:
	__Annually	__Annually	__Annually	__Annually	__Annually	__Annually	__Annually
	__Monthly	__Monthly	__Monthly	__Monthly	__Monthly	__Monthly	__Monthly

<sup>3</sup> This table may be adjusted to reflect the actual method of determining the Administrative Fee. However, the information should be presented on a year by year basis.

**Other Proposed Costs**

If the Provider proposes any other charges, they must be clearly described below. Any charge for services not addressed in the pricing schedule in your Proposal will not be allowed or paid pursuant to the terms of the Agreement.

Please define item, unit, and cost. Information may be included on additional pages, if necessary.

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

\_\_\_\_\_  
Date